



## OFFICE OF THE RUSH TOWN SUPERVISOR GERALD KUSSE

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April 22, 2022

[general@ores.ny.gov](mailto:general@ores.ny.gov)

NYS Office of Renewable Energy Systems

Re: Written Public Comments on the Draft Permit for  
Horseshoe Solar Energy LLC – 21-02480

Dear Judge Caruso and Judge Sayre,

As Supervisor of the Town of Rush I believe it is my responsibility, among many other administrative duties, to also represent our residents, protect the pastoral character of our town, preserve our rural quality of life and our cultural heritage, protect our agricultural lands and operations, and to encourage and support appropriate development.

In its effort to combat and prepare for the impacts of global climate change, New York State has instituted an aggressive plan to shift away from fossil fuel use. The Town of Rush has likewise modified its zoning laws to permit the installation of renewable energy on roofs, in backyards and large-scale applications throughout the Town. The results of its efforts will result in Rush contributing a disproportionately large share of this effort when compared to the other towns, areas, and people of this state.

Unfortunately, in its efforts to move us all in this direction, New York State has failed to adequately address essential concerns including preservation of existing commitments to Home Rule and local governance, agriculture, historic heritage, and protection of cultural sensitive areas. For example:

- In a State in which only 5% of the land is prime farmland, it makes no sense to locate large solar facilities on such valuable land and thus weaken our food resource base which is also threatened by climate change;
- In a Town, like Rush that has passed its own solar law allowing 150 acres of large scale solar energy facilities on land across the town where it was previously prohibited, it makes no sense to arbitrarily waive requirements of the Town's Solar Energy Systems Law, especially when the applicant, Horseshoe Solar, has provided no specific justification for the requested waivers, and only offers the claim that the Town law is "Unreasonably Burdensome;"
- For a Town, like Rush, that will contribute: seven times what might be expected on a per town basis across the 931 towns in NYS, 12 times what might be expected on a per square mile basis in NYS, and over 37 times what might be expected on a per person basis in NYS, for the State to not even recognize the collaborative willingness of the Town to participate and to show some regard for these efforts, departs dramatically from a State that boasts Home Rule and local governance over related areas of control;
- In a Town that has been identified by Dr. Josalyn Ferguson at SHPO as unique in its Indigenous cultural heritage, rich in its related artifacts, and very meaningful in its spiritual relevance to descendant people, for the State to disregard its commitments over the years to protect and cherish such a legacy is disheartening, disrespectful, unnecessary and just plain wrong.
- In a public meeting, I asked HSS Manager, Marguerite Wells, if HSS had considered using State owned property in Rush and was told that dealing with the State is just too time consuming.
- I have twice been a signatory to the Article 10 DMM in which the Rush Town Board objected to the HSS proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Kusse".

Gerald Kusse, Town Supervisor

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**INTEROFFICE MEMORANDUM**

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**TO:** OFFICE OF RENEWABLE ENERGY SITING

**FROM:** TOWN OF RUSH CONSERVATION BOARD

**SUBJECT:** CASE #21-02480 HORSESHOE SOLAR

**DATE:** APRIL 25, 2022

**CC:** RUSH TOWN BOARD MEMBERS, RUSH PLANNING BOARD MEMBERS

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Over three years ago, the Rush Conservation Board submitted a statement regarding the proposal to develop a large parcel in the southwest sector of our town, as part of a solar energy facility. We appreciate the opportunity to submit this updated statement in connection with current reviews of the proposals.

As members of the Conservation Board, our input is focused on our role in promoting the preservation of the unique environment and the valued natural resources of our town.

We recognize the importance of solar energy and its future in New York State. We further recognize that the size and scope of this project could have a profound effect on our town and its environment.

There are numerous questions and concerns that we continue to urge be explored and addressed, prior to any government decisions favoring this project. Some of these issues are outlined below:

1. Disruptions of habitat  
A major concern continues to be the potential effect of the project on area wildlife. We ask that the effects on deer, birds, and other wildlife be fully addressed, and if the disruption cannot be adequately mitigated, the project should be reduced or halted.
2. Impact on town-owned land  
The town of Rush owns eight acres of land on Golah Road, adjacent to the proposed project. This land is utilized by the public. The impact of the project on public land must be considered and mitigated.
3. Ground cover  
We have concerns regarding realistic management of ground cover, and also regarding the possible use of chemical agents for grass control.
4. Effect on rural environment  
Issues of open space, detrimental effect on current land use, and potential visual pollution are additional concerns.
5. Archeological preservation

The property at issue is known to have been used as a burial ground for a Native American tribe, and we have been informed that interred remains and other Native American artifacts are found on the land. Activities involved in the current proposal could have a deleterious effect.

6. Tax abatement

Another issue to is the effect of tax abatements for farmland in the town.

7. Decommissioning and disposal of the panels

We have serious concerns about protection of the environment in connection with the eventual decommissioning and disposal of the solar panels. At minimum, full information is needed regarding the materials and chemicals used. Further, the state should ensure that the company post a bond sufficient to cover all costs of removal of decommissioned panels in an environmentally friendly manner.

8. Other uses of the property

We foresee the possibility of use of the designated land for wind power, and possibly for gas storage and related uses. We advocate for strict restrictions and monitoring regarding all activities on the property.

We appreciate the opportunity for this additional input. Thank you for your consideration.

Office of Renewable Energy Siting  
Empire State Plaza  
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Albany, NY 12242  
[general@ores.ny.gov](mailto:general@ores.ny.gov)

RE: Written Public Comments on the Draft Permit for Horseshoe Solar Energy LLC – 21-02480

## **I. INTRODUCTION**

When W.H. McIntosh described Rush in his 1877 book *The History of Monroe County 1788-1877*, he could have been describing present day Rush when he wrote “Limited in area, old in settlement, Rush is rich in farms, and occupied by an intelligent, sober, and religious people, worthy descendants of a superior class of pioneers.” [From RUSH by Sue Bittner Mee, p.8]

Residents United to Save our Hometown is an active citizens group numbering in the hundreds of individuals and representatives of other groups. The number is approximate because some represent groups where the person receiving the communications, passes them on to that group’s members. For example, one member represents the Friends of the Genesee Valley Greenway Park/Trail. That State Trail now follows the Indigenous trail depicted in maps drawn in the very early 1800s by Harrison Follett. The maps are housed in the Rundel Library; the maps and trails are cited in the Tubiolo Report “*The Cultural Landscape of the Genesee Valley*”.

Our membership also includes approximately 12% Indigenous individuals. Again, this is an approximate percentage as individuals may not declare their Indigenous heritage when applying for membership. Some are known to be Indigenous because they sought membership at a meeting of the Tonawanda Historical Society on August 2, 2020 when we were invited guests to the Reservation or at the Tobacco Burning ceremony at Golah on August 11, 2020.

Res United supports renewable energy on our roof tops and backyards. Members of our Steering Committee (SC) actively worked on our local solar law that includes 150 acres for large-scale solar. When fully built out, our town will contribute 5 times the average power per town, 9 times the average power per square mile and 28 times the average power per NYS resident.

Res United has been able to participate in matters because individual contributions ranging from \$25.00-\$1000.00 supported the initial hiring of attorney Benjamin Wisniewski who filed successful applications for Intervenor Funding and Local Agency Account Funding. *We are grateful for that portion of the Article 10 and ORES regulations which created these funding possibilities underwritten by Invenenergy LLC.*

This submission to ORES will detail the SC’s statement on behalf of our growing membership. We can produce documents that attest to the careful entries on our website and in this submission. We draw the readers’ attention to the following portions of this submission:

- II. **RUSH TOWN PLANNING**
- III. **CLIMATE CHANGE, AGRICULTURE AND ENERGY**
- IV. **HOME RULE AND LOCAL SOLAR LAW**
- V. **INDIGENOUS CULTURAL RESOURCES**
- VI. **HISTORIC RESOURCES**
- VII. **NYS REFUSES TO ACKNOWLEDGE THE TOWN OF RUSH’S EFFORTS**



## **II. RUSH TOWN PLANNING**

The Town of Rush has proactively planned and codified the wishes of residents for many years through various reports, regulations and initiatives. A simple listing will demonstrate that although Rush is the smallest Town in Monroe County, town residents, numbering 3490 in the 2020 Census, proactively participate in protecting the Town's past as well as its future.

1967, First Master Plan was conducted by the Monroe County Planning Council.

1980, Master Plan Update was conducted by the Monroe County Department of Planning and the Rush Planning Board.

1991, The Town of Rush's Conservation Board was asked to participate in a Monroe County Environmental Management Council survey- please see below.

December, 1994, Innovative Farmland Zoning Report, The Report's goal: protecting and encouraging the continuation of farming by exploring incentive zoning and other means.

2010 Comprehensive Plan. Chapter 2, Inventory of Assets, Cultural Resources notes the Seneca habitation throughout the Town but especially mentions Meadowood and Golah, ps. 2-11, 2-12. Chapter 5, Goals, Environment Goal: "Establish a network of open space areas to balance development, preserve ecologically sensitive areas and conserve vital natural resources" p. 5-2; Agriculture Goal: "Conserve agricultural resources and viable farming areas." p. 5-3

2012 Agricultural and Farmland Protection Plan, The Vision Statement for the Farmland Protection Plan: "The Town of Rush envisions a future by which our community remains farm-friendly and supportive of agriculture by recognizing the important role that farming plays in our quality of life and economic well-being. Our agricultural heritage is reflected in the rural landscape that generations of working family farms helped to create. It is this heritage we choose to protect and preserve. We place a high value on our prime farmlands as irreplaceable resources. We will work in partnership with local farmers and landowners to manage community development in a sustainable manner that respects, protects and preserves our farms and natural resources. . . . We will protect farmland soils and soils of statewide importance."

May, 2016—Town of Rush Energy Advisory Committee, A limited listing of goals includes: "reduce use of fossil fuels"; "promote renewable energy solutions"; "safeguard our farmland and small-town rural landscape (e.g. locate solar on unusable or reclaimed land)"; "be responsible stewards of the environment".

June, 2016--Recreation and Agricultural Citizens Committee Report, A limited listing of objectives includes "support our community's vision and protect the character of our rural community"; "safeguard the land and its natural resources, wildlife, and open space"; "promote and support activities that connect and support local farmers"; "align recreational activities that connect to our town's historical rural heritage".

September, 2017—Hamlet of Rush Community Charrette Report

March, 2019 First Local Solar Law, establishes 150 acres for large-scale solar so that the Town of Rush, when fully built out, will provide power such that Rush will provide five times the NYS goal for the average power per town, nine times the NYS goal for the average power per square mile and twenty-eight times the NYS goal for the average power per resident.

October, 2019 Updated Local Solar Law. Maintains the 150 acres and strengthens the language on Home Rule.

## **PESA REPORT**

In 1991, the Monroe County Environmental Management Council created the Preservation of Environmentally Sensitive Areas Committee (PESA). The committee requested assistance of various conservation boards, environmental groups gathering information on sites the local groups thought worthy of preservation. Numerous field trips to the areas submitted to the committee resulted in a report titled "Preservation of Environmentally Sensitive Areas in Monroe County".

Two areas in Rush were designated as worthy of preservation. The first area, Oak Openings, has been preserved and is now managed by the NYSDEC. A significant portion of the second area, termed Industry-Genesee River Site, is now threatened by HSS. The Industry-Genesee River Site is divided into northern and southern portions by the Lehigh Valley Trail. The southern section "contains the confluence of Honeoye Creek and the Genesee River as well as an oxbow of Honeoye Creek. Together, the confluence and the oxbow provide a very important ecosystem which, combined with the size of the site, provide a valuable environmental corridor" p.16. The Genesee River, Honeoye Creek and "all Class A, B, C, and D streams and their banks should be protected and their banks maintained in such a way as to preserve biological habitat and diversity." p. 7.

**Almost 30 years ago, the Town of Rush and Monroe County recognized the need to preserve this important environmentally sensitive area, deeming it "Very High Priority" for preservation. If built as planned, Horseshoe Solar will be installed within this southern portion of the Industry-Genesee River Site. Invenergy has chosen the wrong place for HSS.**

In the July 1, 2019 letter from Town Historian Sue Mee to EDR (Please see the Historical Resources portion of this submission.), Ms. Mee references *Aboriginal Place Names of New York* by W.M. Beauchamp as the source of the name Honeoye. The name Honeoye is derived from the Seneca word ha-ne-a-yah. It is said to translate to "lying finger" or "where the finger lies". The name is referenced to the story of a Native American man whose finger was bitten by a rattlesnake. He cut off his finger with a tomahawk.

In the 1920 *The Archaeological History of New York*, Arthur C. Parker writes of Honeoye Creek.

The valley of Honeoye creek indeed seems to have been an important water route of all the earlier occupants of the county. There are important sites all along the stream. In the town of Rush are innumerable traces of an earlier occupation and many thousands of arrowheads, together with quantities of other relics, have been picked up by collectors. Important sites are near the mouth of the Honeoye creek at its juncture with the Genesee

River. Here the Iroquoian village overlays an earlier Algonkian occupation, while just southward of the Stull farm and along the river are numerous traces of different peoples. Northward on the property of the state industrial school is a village site that yields polished stone implements ... (Parker 1920: 610).

The Lehigh Valley Trail runs along Seneca north/south trails detailed by Harrison Follett in maps now at Rundel Library. A map of trails by Follett is dated 1918.

### **III. CLIMATE CHANGE, AGRICULTURE & ENERGY**

The Town of Rush is dedicated to agriculture. In view of the relative paucity of prime farmland in New York State compared to the relative abundance of the same in the Town of Rush<sup>1</sup>, it is essential to understand the importance of this fact.

- Only 5% of all the land in New York State is prime farmland.
- In the Town of Rush, 84% of land is prime farmland.
- While the Town of Rush represents only 0.06% of the total land in New York State, it contains over 17 times the average amount of prime farmland per acre for NYS!
- In view of the climate change-related uncertainty for food production in the not-so-distant future, we must zealously preserve and protect our prime farmland. There are so very many better places in NYS to develop solar facilities than on prime farmland in Rush.
- NYS Ag & Markets acknowledges the land east of the Genesee River as valuable, highly productive farmland best suited for rotation crop production and has charged that some of the most productive agricultural land in this area will be no longer function as active rotation cropland in conjunction with construction of HSS facilities, impacting the agricultural viability of the area. It recommends other sites be explored. (NYS DAM Staff PSS Comments April 16, 2019).

The Town of Rush is dedicated to solar energy. In May of 2016, New York State published its Model Solar Energy Law to assist communities in NYS to adopt zoning provisions to promote solar energy systems. In 2018, the Town of Rush began developing an addition to its Zoning Law to add a new section for solar energy systems based on the NYS Model Solar Energy Law. The Town Solar Energy Systems Law was passed in March 2019 and later revised in October of that year.

- The intent of the law is to encourage the use of renewable solar energy systems while at the same time protect residential properties, agricultural land, and the Town's rural character.
- Roof-Mounted Solar Energy Systems are permitted in all zoning districts.
- Solar Energy Systems are permitted in the yards of all zoning districts and exempt from site plan review.
- 150 acres of large-scale Solar Energy Systems are permitted on over 90% of all the land in Rush.

The Town of Rush is dedicated to doing its part to meet the statewide energy goal of 6,000 MW of renewable energy. The Town of Rush has committed 150 acres of land to be developed into

<sup>1</sup> US Dept. of Agriculture, Soil Conservation Service, "Prime Farmland of New York," August 1979

large scale solar generation facilities. This is in addition to all roof mounted and backyard mounted systems.

→ 150 acres of large scale solar will generate almost 40 MW of electricity

- \* *This is at least five times what might be expected on a per town basis in NYS!*
- \* *This is at least nine times what might be expected on a per square mile basis in NYS!*
- \* *This is at least 28 times what might be expected on a per person basis in NYS!*

#### **IV. HOME RULE AND LOCAL SOLAR LAW**

HOME RULE IS GOVERNMENT OF A REGION BY ITS OWN CITIZENS.

Article IX, of the NYS Constitution, entitled “Local Government,” is commonly referred to as the “Home Rule” article of the Constitution, for it provides both an affirmative grant of power to local governments over their own property and affairs, and restricts the power of the State Legislature from acting in relation to a local government’s property, affairs, and government.

What Home Rule Means to Our Town of Rush: It means we have a voice in what happens (or doesn’t happen) in our Town. Our Town can regulate land use for the “purpose of promoting the health, safety, morals, or the general welfare of the community” (NY Consolidated Laws (Town) § 261). This is an important and meaningful right to the residents of Rush.

There are over 70 homes in Rush which will be directly affected by Horseshoe Solar's industrial solar facility.

Those citizens who purchased their homes in Rush believed when they bought their homes that home rule would apply and that the Town would regulate land use for the purpose of promoting the health, safety, morals or the general welfare of the community. Most of these homes were zoned Residential R-30 or R-20 at the time of purchase and the residents felt they were adequately protected by these zoning regulations.

To further ensure how solar was regulated in their community the residents of Rush worked in conjunction with the elected officials of the Town of Rush, landowners and Residents United to craft the Rush Town Solar Energy Systems Law §120-74 in 2019. The resulting legislation was a compromise between the various constituent groups. It is a true expression of Home Rule and it should not be bypassed by ORES or any other State Agency.

Residents United is not anti-solar. Quite the contrary. Under the Town of Rush Solar Law solar installations are allowed in the Town of Rush not to exceed a total of 150 acres under §120-74(H)(3).

HSS is requesting that ORES provide relief (in the form of waivers) from numerous subsections of Rush’s Solar Law.

Some examples of this include, but are not limited to, the following:

- a. §120-74(H)(5) – Rush’s Solar Law says solar facilities are limited to no more than 12 feet. HSS challenged this requirement and ORES waived this requirement and will allow an overall height of 17 feet. Keep in mind that there are over 70 houses in Rush that may be in the viewshed of this industrial solar facility.

- b. §120-74(H)(4) – Rush’s Solar Law has location and setback restrictions of 1,000 feet from certain zoning districts or within certain areas of potential sensitivity. This setback requirement was also challenged by HSS. ORES waived this requirement. Only a small amount of the Town is under these particular zoning categories. These areas are heavily populated and that is why Rush’s Solar Law requires a 1,000-foot setback from these zones.
- c. §120-74(H)(10) – Rush’s Solar Law requires complete screening from adjacent properties. To accomplish this screening, existing vegetation shall be utilized to the fullest extent practicable and/or at least two rows of native evergreen trees or other screening acceptable to the Planning Board which is capable of forming a continuous hedge at least 14 feet in height at planting shall be required and maintained. HSS also challenged this requirement. ORES waived this requirement. There will be no screening required to block the view of 17-foot high solar panels.

Additional sections of Rush's Solar Law for which relief is sought by HSS include Section 120-74(H)(3),(6), (8) and (13) some of which appear to be inapplicable based on the current project map.

Under Home Rule the Town of Rush's local solar law should not be ignored or waived by ORES or any other State Agency and rather than a wholesale abandonment of the Town Solar Law each element of the Town Solar Law needs to be carefully examined by ORES with a detailed analysis before waiving or ignoring any of the provisions of the law.

## **V. INDIGENOUS CULTURAL RESOURCES**

Statements published on various NYS DEC websites address the effects of past cultural genocide using the term environmental justice.

THE NYS DEC Office of Environmental Justice states: “Environmental Justice is the fair and meaningful treatment of all people, regardless of race, income, national origin or color, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.” (Environmental Justice)

With respect to Indigenous consultation, the NYSDEC states: “Human beings have been present in New York since the end of the last ice age, approximately 12,000 years ago when people followed retreating glaciers to take advantage of the opportunities provided by the newly opened landscapes. These people were the original occupants in New York. Like us, they had goals, desires, traditions and beliefs, which helped them work together to form communities. They interacted with one another ... Evidence of their cultural practices and ways of living is present in the archaeology of the state, the historical record, and in the oral tradition of the nations. Indigenous people (Native Americans) are still here.”

WE SHOULD LISTEN TO THEIR REQUESTS FOR GROUND PENETRATING RADAR AND PHASE II STUDIES **WHEREVER** GROUND DISTURBANCES WILL OCCUR

Tens of thousands of years ago, in the Genesee River Valley, our town’s first residents lived lives that NYS DEC described. The Tubiolo Report “*The Cultural Landscape of the Genesee Valley*” documents 500 generations of human habitation in the Genesee Valley as people lived along the river, using it for food and transportation only to have their remains and current villages covered



by the frequent flooding occurring over centuries. Ground disturbances threaten the evidence of human habitation- graves, pottery and tools, wooden foundations, etc.

Residents United asserts that a chronology of events is an effective way to document our concerns for our first residents and our town's rich cultural history, worthy of protection by NYS as we mutually wish to prevent further cultural genocide of the Seneca and Tuscarora who resided in the town of Rush.

We are vitally interested in accuracy but must admit that this archaeological terminology is new to us and outside our expertise. Care was taken in the preparation of this chronology however interpretive errors may occur. But ground disturbances and the implications surrounding ground disturbances are understandable.

11/30/2018 The HSS PIP document on the Art 10 DMM announces a project approximately 2600 acres, all in Caledonia, north of Rtes. 5 & 20 to produce 180MW using 600,000 solar panels. The POI is on leased, reclaimed quarry land (and therefore probably few burial sites or probable village locations). The POI includes a 5200 sq ft operations and maintenance building, a laydown yard and a new substation. The POI therefore requires extensive ground disturbance.

**This announcement also means that HSS had a viable business plan in Caledonia, a Point of Insertion (POI) to the grid and needed no additional land resources. Extending the proposed industrial solar plant into Rush means disturbing the ground in western NY's most culturally rich, sensitive Indigenous land.**

12/12/2018, in an "initial consultation submission", Dr. Josalyn Ferguson of SHPO requests maps and narratives about ground-disturbing impacts, including such things as types of mounting systems, access roads, trenches, etc. from Marguerite Wells, HSS's Director.

2/28/2019 The HSS PIP #2 document on the Art 10 DMM announces a project expansion in Caledonia and Rush of 3800 acres in Caledonia and Rush, still north of Rtes. 5 & 20. POI is now at Golah. No MW or number of panel changes but 1200 more acres. Marguerite Wells, HSS project director, told many people that acreage in Rush was not needed, reinforcing the sufficiency of the business plan announced exclusively for Caledonia.

8/14/19 through 8/16/19 A series of emails concerning "geotechnical boring" between Hanley (Panamerican/HSS), Ferguson with copies to various Panamerican individuals as well as Andrew Davis at DPS. Also discussed is who is supposed to notify the Nations (see entry under 12/20/2020).

Geotech: Hanley (8/14/19) Test borings will consist of drilling an approximate 8" diameter hole in the soil to a depth of approximately 20-25 feet below grade. The boring will be backfilled with the auger cuttings upon completion of sampling. Depending on where the soil boring is located, other potential ground disturbances may include driving a rubber track mounted drill rig across fields and down existing farm pathways, or driving a support truck (F-450/550 flatbed) to or nearby the boring location. Also in addition to test borings we are proposing to excavate 16 test pits using a small excavator. The excavation at each location will likely be 2 to 3 feet wide and up to 12 feet deep. The test pits will be backfilled with the soil excavated upon completion.

Ferguson to Hanley, cc Davis at DPS (8/16/2019) Our general guidance for Phase I Survey's for Solar Fields states the following (note underline & italics): "Phase IB archaeological testing IS recommended for the locations of proposed roads, facilities, retention ponds/basins, drainage tiles, staging areas, parking lots, utility trenches over a foot wide, drainages over foot wide, and areas of grubbing and grading." The key point being we may have concerns for impacts over a foot wide or larger than a shovel test, and/or requires an excavator. This of course would include trenches and Invenergy's proposed bore units of 2-3 feet in size. Given the extreme sensitivity of this area, the potential for significant cultural deposits and burials, we are standing by our concern for such large impacts prior to the Phase IA assessment being completed."

Notification of Nations: Ferguson to Hanley, cc Davis at DPS (8/16/2019) Dr. Ferguson was unable to reach the TSNI.

8/15/19 Ferguson to Davis at DPS Invenergy has expressing an interest in undertaking 8-inch diameter soil bore testing for the above noted project, as well as conducting larger 2-3 feet wide excavator assisted bore-test units. It is unclear to the OPRHP why these tests are needed at this juncture, as we are unaware of other solar projects conducting such tests. As we discussed the currently proposed project's Area of Potential Effects (APE) is highly sensitive for both Pre-contact and Historic Archaeological Cultural Resources. It is our office's opinion that significant ground disturbing actions related to this project should not be undertaken without a clear delineation of their proposed locations, an archaeological assessment of the sensitivity of their prospective locations, and the OPRHP has had the opportunity to review and comment on this collective information, as is anticipated to occur with the submission of the revised Phase IA Archaeological Sensitivity Assessment and Literature Review report.

8/20/2019 Ferguson to TSNI following up on call that morning, Ferguson wrote "this project is already highly contentious." Please note 12/20/2020 request from Abrams to ORES that ORES regulations build in immediate notification of and meetings with the Nations at the pre-application stage.

10/10/2019 The Plans and Proposals Document on the Art 10 DMM announces more acreage added to the project. This added acreage is south of Rtes. 5&20 and includes portions of the Canawaugus Reservation. Again, no change in announced MW or panels. Importantly, the POI is now listed at Golah on sacred land and the former POI, on reclaimed quarry land, is now listed as "Alternate POI".

2/10/2020 SNI President Armstrong wrote to Charles Vandrei, the Historical Preservation Officer of the NYSDEC office "We know there are numerous burials and cemeteries in the area and we do not want their resting places compromised and desecrated. . .The Seneca Nation is committed to clean energy and working with our neighbors. We find it important that our partners do their part to respect all Seneca and Haudenosaunee people living or deceased."

Charles Vandrei knows this area extremely well having explored it personally and written about it in the Fall 1987 issue of THE BULLETIN, pages 8-17 "Observations on Seneca Settlement in the Early Historic Period". Certainly Vandrei knows of the "Meadowood arrowhead", a distinctive arrowhead originating from Seneca habitation. The Golah area provided numerous Seneca materials now on display at the Rochester Museum and Science Center in an exhibit called "At the

Western Door”. Meadowood itself will be discussed in this report when historic cultural building resources are “adversely affected” as recorded in the Bonafide letter to Panamerican noted in 5/5/2020 below.

3/5/2020 Phone call to Dr. Josalyn Ferguson by member of the Res United’s Steering Committee notes that Dr. Ferguson is completely familiar with the HSS project as the area is the most archaeologically significant area in upstate NY. Ferguson repeated her concerns about drainage ditches, buried utility lines, pads for electronic equipment, etc. Ferguson reported that Invenenergy was trying to reduce the area for archaeological investigations to be done.

4/2020 Seneca Tribal Historical Preservation Officer Dr. Joe Stahlman wrote the NYS Department of Public Service commenting that: “There are 46 known sites within 500ft of the checkerboard project. There are numerous known and little known and/or forgotten burial locations . . . The Seneca Nation suggests *moving forward with a . . . Phase II investigation with a focus on Ground Penetrating Radar and other non-intrusive methods and limited ground disturbance*. Seneca Nation does not support any Phase II investigations for areas for panel arrays, perimeter Fencing and utility poles IF their associated posts are driven into the ground. . .”

4/29/2020 the TSNI wrote to the NYS Department of Public Service “The TSNI has reviewed the HSS Revised Phase1A/Phase 1B Report. The Nation continues to have concerns about the treatment of Haudenosaunee history and the potential for the Project to adversely impact ancestral Seneca territory.”

5/5/2020 Bonafide (SHPO) to Hanley (Panamerican) with copies to DEC and PSC Regarding archaeology, “the New York State Historic Preservation Office (“SHPO”) continues to review the complex and highly significant archaeological record associated with this undertaking. We are in contact with the Indian Nations who are consulting parties to this action. It is anticipated that extensive archaeological comments will be developed by both our office and the involved Indian Nations as the Section 106 process progresses. Further archaeological comments will be forwarded as additional phases of assessment are completed.”

This synopsis does not include the “adverse effects” to historic buildings, barns and town character Bonafide also reported in this letter.

5/7/2020 Ferguson to Davis, Abrams/Cardinal letter. Ferguson to Davis-“ The OPRHP requests a narrative describing the type of construction impacts associated with such large-scale solar farms, including the typical length, width and depth of each type of impact, and example photographs of typical solar farm construction techniques and equipment. Please also indicate the typical distance between panel supports, panel rows and the typical number of panels per acre. This can be presented as a separate document or included within the below requested archaeological sensitivity model. The OPRHP requests that an archaeological sensitivity model be developed and submitted for review by OPRHP and the consulting Indian Nations prior to its implementation in the field.”

Abrams/Cardinal- letter points out inconsistencies in maps of Canawaugus and seeks map of the Genesee Oaks, savannah maintained by the Seneca on Wadsworth property.

10/12/2020 RALLY to Protect the Ancestors on Indigenous Peoples' Day is centered on Canawaugus. Later that day, the Town of Rush issues its first Indigenous Peoples' Day Proclamation.

12/20/2020 Ms. Abrams, on behalf of the Tonawanda Seneca Nations of Indians asked that ORES Regulations include indigenous people within the official definition of "Person" and "require a pre-application meeting when a proposed project lies within the original Aboriginal territory of a recognized Indian Nation." Other changes in regulations were also requested.

1/4/21 Ms. Abrams to Art 10 DMM (and therefore the DEC and DPS) "The Nation writes to express its grave concerns about the Horseshoe Solar Project and Horseshoe Solar LLC's failure to acknowledge the high sensitivity of the Genesee Valley for cultural resources . . . Deficiencies in the Applicant's Phase IA Study, pointed out previously by the Nations, must be remedied prior to completion of the Phase IB Study. . . In addition, although the Applicant has indicated a willingness to consult with the Nation, as the Notice of Deficiencies points out, the Applicant has failed to provide critical information about . . . including ground disturbing activities, which are particularly important to the Nation; . . . alternatives to avoid damage to cultural resources. . . *The Nation also notes that the Applicant's Environmental Justice analysis fails to take into account impacts of the project on Indian Nations who [sic] cultural resources would be affected . . .*"

2/15/2021 President Pagels to Article 10 DMM "This letter reflects the Nation's formal position with respect to Invenergy's proposed approach to cultural resources for the remainder of the Project. As described below, we request that Invenergy engage in targeted Phase II surveying at the sites . . . in order to ensure the protection of the substantial cultural and historic resources located within the Project's area of potential effects ("APE").

The Study [Phase IB] repeatedly and mistakenly implies that only one Seneca village existed near the APE. . . . Statements like these imply that only those village locations which existed during the period of white settlement of the area are relevant to the Seneca's cultural and historic resources. This pattern of ignoring pre-contact Seneca history raises concern that the Study is only paying lip service to Seneca history. Invenergy's oversimplification of Seneca history and village location practices risks misleading the Siting Board. *But both the Seneca Nation and your office know better* - Haudenosaunee groups would traditionally move their village location every 15-25 years . . . . Consequently, Seneca village sites are littered throughout the greater Project area (including within the APE). The archaeologists who informed Invenergy of the static location of one village omitted this essential information about Seneca practices for village location. The Nation also takes issue with the limited nature of Phase 1 B surveying methods for parcels which have indicators (including archeological and historical records) suggesting a village/burial site. Specifically, the Nation takes issue with piles being driven or drilled into the ground at a depth more than 12" at potential village sites, even where the Study's surface finds revealed minimal artifacts. The Nation again expresses its concern that without a Phase II study, these types of pilings are at risk of directly disrupting Seneca burial sites".

3/2021 President Pagels of the Seneca Nation of Indians (SNI) said: The Seneca Nation, like all indigenous people, is inexorably connected to the land. We take seriously our responsibility to safeguard our environment – as well as our history and culture – to preserve our legacy for the seven generations.

6/21/21 Tubiolo summary letter to DPS/Andrew Davis is submitted to Art 10 DMM.

6/30/21 Interim Siting Board Chairman Howard to William McLaughlin on the Art 10 DMM “ In finding the application complete, I want to acknowledge the letter dated June 9, 2021, from the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP), which raises certain issues related to determinations made by OPRHP. These issues may appropriately be addressed in the next stage of the case.” These “certain issues” involve Indigenous habitation and the constantly remarked upon cultural sensitivity of the Project area.

8/2021 The Tubiolo Report is entered on the Art 10 DMM. Mr. Tubiolo's report “*Cultural Landscape of the Genesee Valley*” details the cultural sensitivity of subsoils the Horseshoe project as proposed would disturb. The report addresses specifically the findings of Horseshoe's Phase IB investigation reports. Mr. Tubiolo concludes that the Phase IB reports are seriously deficient, not for lack of understanding the density of resources or their context and setting. Horseshoe limited the scope of Panamerican's work by directing that soil samples be taken randomly at a depth of four inches. Even shallow sampling like this collected over 10,000 artifacts. Depending on whether Horseshoe elects to use single or double portrait racking for solar panels, between 40,000 and 80,000 piles would be driven 10 feet to 20 feet deep. In addition, foundation footings for 50-foot steel risers to carry interconnection lines, drainage ditches, trenching for underground electrical collection lines, access road construction, and culvert excavation would require excavation at depths substantially greater than four inches.

10/11/2021 The Town of Rush hosts a Teach-In Day discussion of Indigenous history and wampum belt and issues its second Indigenous Peoples’ Day Proclamation.

11/2/2021 The Tubiolo Report was delivered electronically and in hard copy to the SHPO Office. To date, SHPO has made no comment on the Tubiolo Report.

11/3/2021 The NYS Board on Electric Generation Siting and the Environment closes the Art 10 Proceeding and makes HSS subject to the provisions of 94-c and ORES.

2/7/2022 Herter (SHPO) to Edick (ORES) “As noted in our June 9, 2021 Adverse Impact determination letter, we recommend the submission of an archaeological construction monitoring plan. . .” SHPO has had the Tubiolo Report for 3 months and has made no comments even though attorney Abraham’s transmittal letter on Nov 2, 2021 noted that the Tubiolo Report called into question SHPO’s conclusions based on 4 inch sampling and restricted Phase IB analysis. The failure to find more archaeological sites is due to Invenergy’s Panamerican’s restricted methodology.

**Although the purpose of this chronology was to make the readers aware of the repeated concerns for ground disturbances in this incredibly rich, archaeologically distinctive area, it also puts the readers on notice that officials at the DEC, PSC and SHPO have been notified by the Nations and The Tubiolo Report that irreparable harm will be done if HSS defiles these leased lands in Rush.**



## **VI. HISTORICAL RESOURCES**

Residents United to Save our Hometown has participated fully in efforts to document any threats to our historical resources as a result of HSS' proposal to cross the Genesee River and enter the Town of Rush.

As part of the Article 10 proceeding, the Town of Rush received a letter from Environmental Design and Research (EDR) seeking information on the historic resources of the town. The letter was sent to town officials including the town historian in May, 2019. EDR had been hired by Invenergy and one of its subcontractors, Panamerican, to collect information about historic resources visually impacted by Horseshoe Solar. EDR's instructions sought information on any potential visual impacts from Horseshoe Solar and information on historic resources within a 5-mile radius of the HSS-leased properties since the study area for large projects must extend a minimum of 5 miles from the project's facilities (16 CRR-NY 1000.2(ar)).

Because the EDR letter was sent to the historians in surrounding towns, a member of the Residents United Steering Committee met with the historians of Rush and Henrietta and talked by phone with the historian of Avon to assist them in understanding what Article 10 involved and why their inventories of historical resources would be important.

Ms. Susan Mee, town historian of Rush, sent EDR a 6-page letter listing cemeteries, one-room school houses, churches, Wells barns, museums, recreation areas like Oak Openings, properties on the CRIS (Cultural Resources Information System) database, areas of significance like Meadowood, homes of unique construction such as cobblestones and brick historical homes like Elm Place.

At several church meetings of Residents United to Save our Hometown there were signup sheets for individuals to register their homes, roads traveled frequently because the Article 10 regulations allowed such registrations. Again, many locations where there would be visual impacts from HSS were sent to EDR.

Some of the sites sent to EDR deserve special attention because of this highly sensitive archaeological and historical resource area.

- \* Oak Openings refers to a site in Rush characterized as a globally endangered ecosystem, one of only five in NYS. Within these ecosystems are rare plants and thriving wildlife. The Seneca used fire to create these savannas at the end of the 1700s. The Genesee Oaks are mammoth, centuries-old trees achieving this huge size because the fires used by the Senecas created space for the trees to grow without surrounding plant competition.
- \* Meadowood is a 30-acre area bordering the east side of the Genesee River at the extension of Stull Road. Many of the original trees and the formal gardens remain at this site originally built in the 1910s for the Wray family. Noted Rochester architect Claude Bragdon designed and built several houses there- a gentleman's country estate of the time. Charles Wray (1919-1985), past president of the NYS Archaeological Association was a noted archaeologist and scholar of the Seneca. Corbett Sundown, Hawk Clan Sachem Chief of the Seneca, attended Wray's funeral. Local museums often feature Meadowood arrowheads, collected in this area. During Rush's Bicentennial celebration, one of the Bragdon houses was on the house tour.

- \* Elm Place is at the southernmost border of Rush and is the oldest brick house in the Genesee Valley. Colonel William Markham III came to the Genesee Valley in 1789 and was the first permanent European settler of Rush. He became Rush's first supervisor in 1818, holding town meetings in his living room. At this same location, in the early 1700s a settlement of Tuscarora lived having been expelled from the Carolinas during the 1714-1722 period. The Tuscarora joined the Five Nations (Mohawk, Oneida, Onondaga, Cayuga and Seneca) becoming the 6<sup>th</sup> Nation of the Iroquois League. During Rush's bicentennial celebration, Elm Place was on the house tour.
- \* Cobblestone structures. Cobblestones are a type of building construction that developed, flourished and then ceased within a fifty-year, pre-Civil War period in the Rochester area. More than 90% of the documented cobblestones exist within a 65-mile radius of Rochester. There are 106 within Monroe County and 7 within the Town of Rush. The cobblestone Rush-West Rush Firehouse is not included within the house count; it is next to the 1932 State Education Department Honeoye Valley sign proclaiming that "Three Indian Tribes have Hunted, Fished and Tilled the Soil Here for Thousands of Years" The sign is next to Honeoye Creek and less than a mile from Golah where Honeoye Creek joins the Genesee River. [From Freeman, *Cobblestone Quest* and Schmidt, *Cobblestone Masonry*]

Historian Mee's letter to EDR was dated July 1, 2019. Nothing was heard in return from EDR, Panamerican or Invenergy.

On May 5, 2020, John Bonafide, Director of Technical Preservation Services Bureau and Agency Historic Preservation Officer at SHPO wrote to Robert Hanley of Panamerican with copies to Charles Vandrei of the DEC and Andrew Davis of the PSC. The letter included a "Historic Properties List".

There are multiple items of note in the 5/5/2020 letter.

*First*, Bonafide reports receiving Panamerican's "Two-Mile Visual Architectural Survey", presumably as a result of EDR's subcontract. How can this be a two-mile survey in the Article 10 period when the study area for large projects must extend a minimum of 5 miles from the project's facilities? (16CRR-NY 1000.2(ar))

*Second*, Bonafide used this two-mile survey and determined that "the project area includes 3 properties that are listed in the New York State and National Registers of Historic Places ("Registers"). An additional 36 properties meet the requirements for inclusion in the Registers, 1 property was determined to be not-eligible for inclusion in the Registers and 12 properties lack sufficient information for a determination by this office. One additional property that was previously determined eligible has now been demolished."

Ms. Mee sent EDR six pages of information about properties within five-miles and Residents United sent additional materials as well. That information apparently NEVER reached the appropriate Office of Parks, Recreation and Historic Preservation. That said, cobblestone homes, Elm Place, a Wells barn and Meadowood/Bragdon homes were on the two-mile list.

*Third*, referring to Section 106 regulations, Bonafide defines the term adverse effects: "An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a

historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.”

Referring to The National Park Service’s Bulletin 15, the term setting for a historic property is defined as “Setting is the physical environment of a historic property... Setting refers to the character of the place in which a property played its historic role.”

Fourth, on the basis of these definitions, and using a truncated two-mile visual list, Bonafide concludes that on the 1260 acres of proposed paneled land:

----"The concern will be the regimented linear industrial-looking rows that may be visible from the National Register listed and eligible properties.

----The project area’s landscape is generally open and agricultural in character.

----This rural setting is an important character-defining feature associated with the identified historic properties.

---- The proposed long regimented rows of black, semi-reflective panels may be highly visible in the areas of the historic resources.

----The large solar arrays with their industrial form and scale will be incongruous with the surrounding natural agricultural setting.

----Potential glare and reflectivity at various times of the day are also of concern.”

The summative conclusion is that “our office has found **that the undertaking will have adverse effect on historic resources within the project’s area of potential effect.**”

Dr. Nancy Herter’s final pronouncement on the subject of historic resources was contained in her February 7, 2022 letter to Rudyard Edick of ORES “As noted in our Adverse Impact determination letter, we recommend . . . a historic preservation mitigation plan related to historic buildings.”

This analysis was completed while the HSS was within the Article 10 regulations 16CRR-NY 1001.24 (a) (10) which states “proposed mitigation and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, . . .”

Vitally important decisions must now be made if 16CRR-NT 1001.24 (a) (10) continues to be the regulation that applies. If ORES has superseded that regulation in the interest of more speedy renewable energy siting, then what is the legislative mandate for the Office of Historic Preservation?

Decisions:

Meadowood, a documented historic resource, rises above planned areas for installed solar panels; the typography means that in winter, Meadowood is “adversely affected”. Screening will likely also be of little use. Must HSS comply with “relocation or rearranging facility components” as defined by mitigation?

What other identified historic resources are also “adversely affected” and how will the definition of mitigation be applied to them?

What about all the historic resources sent to EDR from a five-mile radius but apparently not sent to SHPO by Panamerican? How will the “adverse effect” be assessed for them?

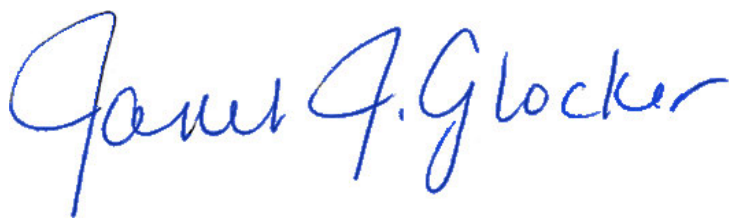
If mitigation takes the form of a fine/money, then that sum must be returned to the Town of Rush and cannot be subtracted from any negotiated pecuniary settlements.

## **VII. NYS REFUSES TO ACKNOWLEDGE THE TOWN OF RUSH’S EFFORTS!**

New York State created a series of renewable energy goals, related acts and specialized offices that focused on outcomes but neglected process.

- NYS did not provide local municipalities any opportunity to meaningfully participate in these efforts.
- NYS instead allied itself with industry to write State policy, override NY Constitutional Home Rule provisions, and forge ahead without any recognition of efforts made by local municipalities to contribute.
- NYS and its industrial partners did not adequately consider variations in insolation (i.e., the amount of energy delivered by the sun) across the State.
- NYS further diminished Constitutional Home Rule provisions by replacing Article 10 with USC Section 94-c. NYS chose not to evaluate the cumulative environmental impacts of implementing the Climate Leadership and Community Protection Act and the Accelerated Renewable Energy Siting and Community Benefit Act.

Respectfully submitted on behalf of the membership of the Rush citizen group,  
**Residents United to Save our Hometown,**



Janet Glocker, **RUSH** Chair

## Residents United to Save our Hometown – April 27, 2022

Office of Renewable Energy Siting  
Empire State Plaza  
240 State Street, P-1 South, J Dock  
Albany, NY 12242  
[general@ores.ny.gov](mailto:general@ores.ny.gov)

RE: Written Public Comments on the Draft Permit for Horseshoe Solar Energy LLC – 21-02480

### I. INTRODUCTION

When W.H. McIntosh described Rush in his 1877 book *The History of Monroe County 1788-1877*, he could have been describing present day Rush when he wrote “Limited in area, old in settlement, Rush is rich in farms, and occupied by an intelligent, sober, and religious people, worthy descendants of a superior class of pioneers.” [From RUSH by Sue Bittner Mee, p.8]

Residents United to Save our Hometown is an active citizens group numbering in the hundreds of individuals and representatives of other groups. The number is approximate because some represent groups where the person receiving the communications, passes them on to that group’s members. For example, one member represents the Friends of the Genesee Valley Greenway Park/Trail. That State Trail now follows the Indigenous trail depicted in maps drawn in the very early 1800s by Harrison Follett. The maps are housed in the Rundel Library; the maps and trails are cited in the Tubiolo Report “*The Cultural Landscape of the Genesee Valley*”.

Our membership also includes approximately 12% Indigenous individuals. Again, this is an approximate percentage as individuals may not declare their Indigenous heritage when applying for membership. Some are known to be Indigenous because they sought membership at a meeting of the Tonawanda Historical Society on August 2, 2020 when we were invited guests to the Reservation or at the Tobacco Burning ceremony at Golah on August 11, 2020.

Res United supports renewable energy on our roof tops and backyards. Members of our Steering Committee (SC) actively worked on our local solar law that includes 150 acres for large-scale solar. When fully built out, our town will contribute 5 times the average power per town, 9 times the average power per square mile and 28 times the average power per NYS resident.

Res United has been able to participate in matters because individual contributions ranging from \$25.00-\$1000.00 supported the initial hiring of attorney Benjamin Wisniewski who filed successful applications for Intervenor Funding and Local Agency Account Funding. *We are grateful for that portion of the Article 10 and ORES regulations which created these funding possibilities underwritten by Invenenergy LLC.*

This submission to ORES will detail the SC’s statement on behalf of our growing membership. We can produce documents that attest to the careful entries on our website and in this submission. We draw the readers’ attention to the following portions of this submission:

- II. RUSH TOWN PLANNING
- III. CLIMATE CHANGE, AGRICULTURE AND ENERGY
- IV. HOME RULE AND LOCAL SOLAR LAW
- V. INDIGENOUS CULTURAL RESOURCES
- VI. HISTORIC RESOURCES
- VII. NYS REFUSES TO ACKNOWLEDGE THE TOWN OF RUSH’S EFFORTS



## Residents United to Save our Hometown – April 27, 2022

### II. RUSH TOWN PLANNING

The Town of Rush has proactively planned and codified the wishes of residents for many years through various reports, regulations and initiatives. A simple listing will demonstrate that although Rush is the smallest Town in Monroe County, town residents, numbering 3490 in the 2020 Census, proactively participate in protecting the Town's past as well as its future.

1967, First Master Plan was conducted by the Monroe County Planning Council.

1980, Master Plan Update was conducted by the Monroe County Department of Planning and the Rush Planning Board.

1991, The Town of Rush's Conservation Board was asked to participate in a Monroe County Environmental Management Council survey- please see below.

December, 1994, Innovative Farmland Zoning Report, The Report's goal: protecting and encouraging the continuation of farming by exploring incentive zoning and other means.

2010 Comprehensive Plan. Chapter 2, Inventory of Assets, Cultural Resources notes the Seneca habitation throughout the Town but especially mentions Meadowood and Golah, ps. 2-11, 2-12. Chapter 5, Goals, Environment Goal: "Establish a network of open space areas to balance development, preserve ecologically sensitive areas and conserve vital natural resources" p. 5-2; Agriculture Goal: "Conserve agricultural resources and viable farming areas." p. 5-3

2012 Agricultural and Farmland Protection Plan, The Vision Statement for the Farmland Protection Plan: "The Town of Rush envisions a future by which our community remains farm-friendly and supportive of agriculture by recognizing the important role that farming plays in our quality of life and economic well-being. Our agricultural heritage is reflected in the rural landscape that generations of working family farms helped to create. It is this heritage we choose to protect and preserve. We place a high value on our prime farmlands as irreplaceable resources. We will work in partnership with local farmers and landowners to manage community development in a sustainable manner that respects, protects and preserves our farms and natural resources. . . . We will protect farmland soils and soils of statewide importance."

May, 2016—Town of Rush Energy Advisory Committee, A limited listing of goals includes: "reduce use of fossil fuels"; "promote renewable energy solutions"; "safeguard our farmland and small-town rural landscape (e.g. locate solar on unusable or reclaimed land)"; "be responsible stewards of the environment".

June, 2016--Recreation and Agricultural Citizens Committee Report, A limited listing of objectives includes "support our community's vision and protect the character of our rural community"; "safeguard the land and its natural resources, wildlife, and open space"; "promote and support activities that connect and support local farmers"; "align recreational activities that connect to our town's historical rural heritage".

September, 2017—Hamlet of Rush Community Charrette Report

## Residents United to Save our Hometown – April 27, 2022

March, 2019 First Local Solar Law, establishes 150 acres for large-scale solar so that the Town of Rush, when fully built out, will provide power such that Rush will provide five times the NYS goal for the average power per town, nine times the NYS goal for the average power per square mile and twenty-eight times the NYS goal for the average power per resident.

October, 2019 Updated Local Solar Law. Maintains the 150 acres and strengthens the language on Home Rule.

### **PESA REPORT**

In 1991, the Monroe County Environmental Management Council created the Preservation of Environmentally Sensitive Areas Committee (PESA). The committee requested assistance of various conservation boards, environmental groups gathering information on sites the local groups thought worthy of preservation. Numerous field trips to the areas submitted to the committee resulted in a report titled “Preservation of Environmentally Sensitive Areas in Monroe County”.

Two areas in Rush were designated as worthy of preservation. The first area, Oak Openings, has been preserved and is now managed by the NYSDEC. A significant portion of the second area, termed Industry-Genesee River Site, is now threatened by HSS. The Industry-Genesee River Site is divided into northern and southern portions by the Lehigh Valley Trail. The southern section “contains the confluence of Honeoye Creek and the Genesee River as well as an oxbow of Honeoye Creek. Together, the confluence and the oxbow provide a very important ecosystem which, combined with the size of the site, provide a valuable environmental corridor” p.16. The Genesee River, Honeoye Creek and “all Class A, B, C, and D streams and their banks should be protected and their banks maintained in such a way as to preserve biological habitat and diversity.” p. 7.

**Almost 30 years ago, the Town of Rush and Monroe County recognized the need to preserve this important environmentally sensitive area, deeming it “Very High Priority” for preservation. If built as planned, Horseshoe Solar will be installed within this southern portion of the Industry-Genesee River Site. Invenergy has chosen the wrong place for HSS.**

In the July 1, 2019 letter from Town Historian Sue Mee to EDR (Please see the Historical Resources portion of this submission.), Ms. Mee references *Aboriginal Place Names of New York* by W.M. Beauchamp as the source of the name Honeoye. The name Honeoye is derived from the Seneca word ha-ne-a-yah. It is said to translate to “lying finger” or “where the finger lies”. The name is referenced to the story of a Native American man whose finger was bitten by a rattlesnake. He cut off his finger with a tomahawk.

In the 1920 *The Archaeological History of New York*, Arthur C. Parker writes of Honeoye Creek.

The valley of Honeoye creek indeed seems to have been an important water route of all the earlier occupants of the county. There are important sites all along the stream. In the town of Rush are innumerable traces of an earlier occupation and many thousands of arrowheads, together with quantities of other relics, have been picked up by collectors. Important sites are near the mouth of the Honeoye creek at its juncture with the Genesee

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River. Here the Iroquoian village overlays an earlier Algonkian occupation, while just southward of the Stull farm and along the river are numerous traces of different peoples. Northward on the property of the state industrial school is a village site that yields polished stone implements ... (Parker 1920: 610).

The Lehigh Valley Trail runs along Seneca north/south trails detailed by Harrison Follett in maps now at Rundel Library. A map of trails by Follett is dated 1918.

### **III. CLIMATE CHANGE, AGRICULTURE & ENERGY**

The Town of Rush is dedicated to agriculture. In view of the relative paucity of prime farmland in New York State compared to the relative abundance of the same in the Town of Rush<sup>1</sup>, it is essential to understand the importance of this fact.

- Only 5% of all the land in New York State is prime farmland.
- In the Town of Rush, 84% of land is prime farmland.
- While the Town of Rush represents only 0.06% of the total land in New York State, it contains over 17 times the average amount of prime farmland per acre for NYS!
- In view of the climate change-related uncertainty for food production in the not-so-distant future, we must zealously preserve and protect our prime farmland. There are so very many better places in NYS to develop solar facilities than on prime farmland in Rush.
- NYS Ag & Markets acknowledges the land east of the Genesee River as valuable, highly productive farmland best suited for rotation crop production and has charged that some of the most productive agricultural land in this area will be no longer function as active rotation cropland in conjunction with construction of HSS facilities, impacting the agricultural viability of the area. It recommends other sites be explored. (NYS DAM Staff PSS Comments April 16, 2019).

The Town of Rush is dedicated to solar energy. In May of 2016, New York State published its Model Solar Energy Law to assist communities in NYS to adopt zoning provisions to promote solar energy systems. In 2018, the Town of Rush began developing an addition to its Zoning Law to add a new section for solar energy systems based on the NYS Model Solar Energy Law. The Town Solar Energy Systems Law was passed in March 2019 and later revised in October of that year.

- The intent of the law is to encourage the use of renewable solar energy systems while at the same time protect residential properties, agricultural land, and the Town's rural character.
- Roof-Mounted Solar Energy Systems are permitted in all zoning districts.
- Solar Energy Systems are permitted in the yards of all zoning districts and exempt from site plan review.
- 150 acres of large-scale Solar Energy Systems are permitted on over 90% of all the land in Rush.

The Town of Rush is dedicated to doing its part to meet the statewide energy goal of 6,000 MW of renewable energy. The Town of Rush has committed 150 acres of land to be developed into

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<sup>1</sup> US Dept. of Agriculture, Soil Conservation Service, "Prime Farmland of New York," August 1979

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large scale solar generation facilities. This is in addition to all roof mounted and backyard mounted systems.

→ 150 acres of large scale solar will generate almost 40 MW of electricity

- \* *This is at least five times what might be expected on a per town basis in NYS!*
- \* *This is at least nine times what might be expected on a per square mile basis in NYS!*
- \* *This is at least 28 times what might be expected on a per person basis in NYS!*

### **IV. HOME RULE AND LOCAL SOLAR LAW**

HOME RULE IS GOVERNMENT OF A REGION BY ITS OWN CITIZENS.

Article IX, of the NYS Constitution, entitled “Local Government,” is commonly referred to as the “Home Rule” article of the Constitution, for it provides both an affirmative grant of power to local governments over their own property and affairs, and restricts the power of the State Legislature from acting in relation to a local government’s property, affairs, and government.

What Home Rule Means to Our Town of Rush: It means we have a voice in what happens (or doesn’t happen) in our Town. Our Town can regulate land use for the “purpose of promoting the health, safety, morals, or the general welfare of the community” (NY Consolidated Laws (Town) § 261). This is an important and meaningful right to the residents of Rush.

There are over 70 homes in Rush which will be directly affected by Horseshoe Solar's industrial solar facility.

Those citizens who purchased their homes in Rush believed when they bought their homes that home rule would apply and that the Town would regulate land use for the purpose of promoting the health, safety, morals or the general welfare of the community. Most of these homes were zoned Residential R-30 or R-20 at the time of purchase and the residents felt they were adequately protected by these zoning regulations.

To further ensure how solar was regulated in their community the residents of Rush worked in conjunction with the elected officials of the Town of Rush, landowners and Residents United to craft the Rush Town Solar Energy Systems Law §120-74 in 2019. The resulting legislation was a compromise between the various constituent groups. It is a true expression of Home Rule and it should not be bypassed by ORES or any other State Agency.

Residents United is not anti-solar. Quite the contrary. Under the Town of Rush Solar Law solar installations are allowed in the Town of Rush not to exceed a total of 150 acres under §120-74(H)(3).

HSS is requesting that ORES provide relief (in the form of waivers) from numerous subsections of Rush’s Solar Law.

Some examples of this include, but are not limited to, the following:

- a. §120-74(H)(5) – Rush’s Solar Law says solar facilities are limited to no more than 12 feet. HSS challenged this requirement and ORES waived this requirement and will allow an overall height of 17 feet. Keep in mind that there are over 70 houses in Rush that may be in the viewshed of this industrial solar facility.

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- b. §120-74(H)(4) – Rush’s Solar Law has location and setback restrictions of 1,000 feet from certain zoning districts or within certain areas of potential sensitivity. This setback requirement was also challenged by HSS. ORES waived this requirement. Only a small amount of the Town is under these particular zoning categories. These areas are heavily populated and that is why Rush’s Solar Law requires a 1,000-foot setback from these zones.
- c. §120-74(H)(10) – Rush’s Solar Law requires complete screening from adjacent properties. To accomplish this screening, existing vegetation shall be utilized to the fullest extent practicable and/or at least two rows of native evergreen trees or other screening acceptable to the Planning Board which is capable of forming a continuous hedge at least 14 feet in height at planting shall be required and maintained. HSS also challenged this requirement. ORES waived this requirement. There will be no screening required to block the view of 17-foot high solar panels.

Additional sections of Rush's Solar Law for which relief is sought by HSS include Section 120-74(H)(3),(6), (8) and (13) some of which appear to be inapplicable based on the current project map.

Under Home Rule the Town of Rush's local solar law should not be ignored or waived by ORES or any other State Agency and rather than a wholesale abandonment of the Town Solar Law each element of the Town Solar Law needs to be carefully examined by ORES with a detailed analysis before waiving or ignoring any of the provisions of the law.

## V. INDIGENOUS CULTURAL RESOURCES

Statements published on various NYS DEC websites address the effects of past cultural genocide using the term environmental justice.

THE NYS DEC Office of Environmental Justice states: “Environmental Justice is the fair and meaningful treatment of all people, regardless of race, income, national origin or color, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.” (Environmental Justice)

With respect to Indigenous consultation, the NYSDEC states: “Human beings have been present in New York since the end of the last ice age, approximately 12,000 years ago when people followed retreating glaciers to take advantage of the opportunities provided by the newly opened landscapes. These people were the original occupants in New York. Like us, they had goals, desires, traditions and beliefs, which helped them work together to form communities. They interacted with one another ... Evidence of their cultural practices and ways of living is present in the archaeology of the state, the historical record, and in the oral tradition of the nations. Indigenous people (Native Americans) are still here.”

WE SHOULD LISTEN TO THEIR REQUESTS FOR GROUND PENETRATING RADAR AND PHASE II STUDIES **WHEREVER** GROUND DISTURBANCES WILL OCCUR

Tens of thousands of years ago, in the Genesee River Valley, our town’s first residents lived lives that NYS DEC described. The Tubiolo Report “*The Cultural Landscape of the Genesee Valley*” documents 500 generations of human habitation in the Genesee Valley as people lived along the river, using it for food and transportation only to have their remains and current villages covered



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by the frequent flooding occurring over centuries. Ground disturbances threaten the evidence of human habitation- graves, pottery and tools, wooden foundations, etc.

Residents United asserts that a chronology of events is an effective way to document our concerns for our first residents and our town's rich cultural history, worthy of protection by NYS as we mutually wish to prevent further cultural genocide of the Seneca and Tuscarora who resided in the town of Rush.

We are vitally interested in accuracy but must admit that this archaeological terminology is new to us and outside our expertise. Care was taken in the preparation of this chronology however interpretive errors may occur. But ground disturbances and the implications surrounding ground disturbances are understandable.

11/30/2018 The HSS PIP document on the Art 10 DMM announces a project approximately 2600 acres, all in Caledonia, north of Rtes. 5 & 20 to produce 180MW using 600,000 solar panels. The POI is on leased, reclaimed quarry land (and therefore probably few burial sites or probable village locations). The POI includes a 5200 sq ft operations and maintenance building, a laydown yard and a new substation. The POI therefore requires extensive ground disturbance.

**This announcement also means that HSS had a viable business plan in Caledonia, a Point of Insertion (POI) to the grid and needed no additional land resources. Extending the proposed industrial solar plant into Rush means disturbing the ground in western NY's most culturally rich, sensitive Indigenous land.**

12/12/2018, in an "initial consultation submission", Dr. Josalyn Ferguson of SHPO requests maps and narratives about ground-disturbing impacts, including such things as types of mounting systems, access roads, trenches, etc. from Marguerite Wells, HSS's Director.

2/28/2019 The HSS PIP #2 document on the Art 10 DMM announces a project expansion in Caledonia and Rush of 3800 acres in Caledonia and Rush, still north of Rtes. 5 & 20. POI is now at Golah. No MW or number of panel changes but 1200 more acres. Marguerite Wells, HSS project director, told many people that acreage in Rush was not needed, reinforcing the sufficiency of the business plan announced exclusively for Caledonia.

8/14/19 through 8/16/19 A series of emails concerning "geotechnical boring" between Hanley (Panamerican/HSS), Ferguson with copies to various Panamerican individuals as well as Andrew Davis at DPS. Also discussed is who is supposed to notify the Nations (see entry under 12/20/2020).

Geotech: Hanley (8/14/19) Test borings will consist of drilling an approximate 8" diameter hole in the soil to a depth of approximately 20-25 feet below grade. The boring will be backfilled with the auger cuttings upon completion of sampling. Depending on where the soil boring is located, other potential ground disturbances may include driving a rubber track mounted drill rig across fields and down existing farm pathways, or driving a support truck (F-450/550 flatbed) to or nearby the boring location. Also in addition to test borings we are proposing to excavate 16 test pits using a small excavator. The excavation at each location will likely be 2 to 3 feet wide and up to 12 feet deep. The test pits will be backfilled with the soil excavated upon completion.

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Ferguson to Hanley, cc Davis at DPS (8/16/2019) Our general guidance for Phase I Survey's for Solar Fields states the following (note underline & italics): "Phase IB archaeological testing IS recommended for the locations of proposed roads, facilities, retention ponds/basins, drainage tiles, staging areas, parking lots, utility trenches over a foot wide, drainages over foot wide, and areas of grubbing and grading." The key point being we may have concerns for impacts over a foot wide or larger than a shovel test, and/or requires an excavator. This of course would include trenches and Invenergy's proposed bore units of 2-3 feet in size. Given the extreme sensitivity of this area, the potential for significant cultural deposits and burials, we are standing by our concern for such large impacts prior to the Phase IA assessment being completed."

Notification of Nations: Ferguson to Hanley, cc Davis at DPS (8/16/2019) Dr. Ferguson was unable to reach the TSNI.

8/15/19 Ferguson to Davis at DPS Invenergy has expressing an interest in undertaking 8-inch diameter soil bore testing for the above noted project, as well as conducting larger 2-3 feet wide excavator assisted bore-test units. It is unclear to the OPRHP why these tests are needed at this juncture, as we are unaware of other solar projects conducting such tests. As we discussed the currently proposed project's Area of Potential Effects (APE) is highly sensitive for both Pre-contact and Historic Archaeological Cultural Resources. It is our office's opinion that significant ground disturbing actions related to this project should not be undertaken without a clear delineation of their proposed locations, an archaeological assessment of the sensitivity of their prospective locations, and the OPRHP has had the opportunity to review and comment on this collective information, as is anticipated to occur with the submission of the revised Phase IA Archaeological Sensitivity Assessment and Literature Review report.

8/20/2019 Ferguson to TSNI following up on call that morning, Ferguson wrote "this project is already highly contentious." Please note 12/20/2020 request from Abrams to ORES that ORES regulations build in immediate notification of and meetings with the Nations at the pre-application stage.

10/10/2019 The Plans and Proposals Document on the Art 10 DMM announces more acreage added to the project. This added acreage is south of Rtes. 5&20 and includes portions of the Canawaugus Reservation. Again, no change in announced MW or panels. Importantly, the POI is now listed at Golah on sacred land and the former POI, on reclaimed quarry land, is now listed as "Alternate POI".

2/10/2020 SNI President Armstrong wrote to Charles Vandrei, the Historical Preservation Officer of the NYSDEC office "We know there are numerous burials and cemeteries in the area and we do not want their resting places compromised and desecrated. . .The Seneca Nation is committed to clean energy and working with our neighbors. We find it important that our partners do their part to respect all Seneca and Haudenosaunee people living or deceased."

Charles Vandrei knows this area extremely well having explored it personally and written about it in the Fall 1987 issue of THE BULLETIN, pages 8-17 "Observations on Seneca Settlement in the Early Historic Period". Certainly Vandrei knows of the "Meadowood arrowhead", a distinctive arrowhead originating from Seneca habitation. The Golah area provided numerous Seneca materials now on display at the Rochester Museum and Science Center in an exhibit called "At the

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Western Door”. Meadowood itself will be discussed in this report when historic cultural building resources are “adversely affected” as recorded in the Bonafide letter to Panamerican noted in 5/5/2020 below.

3/5/2020 Phone call to Dr. Josalyn Ferguson by member of the Res United’s Steering Committee notes that Dr. Ferguson is completely familiar with the HSS project as the area is the most archaeologically significant area in upstate NY. Ferguson repeated her concerns about drainage ditches, buried utility lines, pads for electronic equipment, etc. Ferguson reported that Invenergy was trying to reduce the area for archaeological investigations to be done.

4/2020 Seneca Tribal Historical Preservation Officer Dr. Joe Stahlman wrote the NYS Department of Public Service commenting that: “There are 46 known sites within 500ft of the checkerboard project. There are numerous known and little known and/or forgotten burial locations . . . The Seneca Nation suggests *moving forward with a . . . Phase II investigation with a focus on Ground Penetrating Radar and other non-intrusive methods and limited ground disturbance*. Seneca Nation does not support any Phase II investigations for areas for panel arrays, perimeter Fencing and utility poles IF their associated posts are driven into the ground. . .”

4/29/2020 the TSNI wrote to the NYS Department of Public Service “The TSNI has reviewed the HSS Revised Phase1A/Phase 1B Report. The Nation continues to have concerns about the treatment of Haudenosaunee history and the potential for the Project to adversely impact ancestral Seneca territory.”

5/5/2020 Bonafide (SHPO) to Hanley (Panamerican) with copies to DEC and PSC Regarding archaeology, “the New York State Historic Preservation Office (“SHPO”) continues to review the complex and highly significant archaeological record associated with this undertaking. We are in contact with the Indian Nations who are consulting parties to this action. It is anticipated that extensive archaeological comments will be developed by both our office and the involved Indian Nations as the Section 106 process progresses. Further archaeological comments will be forwarded as additional phases of assessment are completed.”

This synopsis does not include the “adverse effects” to historic buildings, barns and town character Bonafide also reported in this letter.

5/7/2020 Ferguson to Davis, Abrams/Cardinal letter. Ferguson to Davis-“ The OPRHP requests a narrative describing the type of construction impacts associated with such large-scale solar farms, including the typical length, width and depth of each type of impact, and example photographs of typical solar farm construction techniques and equipment. Please also indicate the typical distance between panel supports, panel rows and the typical number of panels per acre. This can be presented as a separate document or included within the below requested archaeological sensitivity model. The OPRHP requests that an archaeological sensitivity model be developed and submitted for review by OPRHP and the consulting Indian Nations prior to its implementation in the field.”

Abrams/Cardinal- letter points out inconsistencies in maps of Canawaugus and seeks map of the Genesee Oaks, savannah maintained by the Seneca on Wadsworth property.

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10/12/2020 RALLY to Protect the Ancestors on Indigenous Peoples' Day is centered on Canawaugus. Later that day, the Town of Rush issues its first Indigenous Peoples' Day Proclamation.

12/20/2020 Ms. Abrams, on behalf of the Tonawanda Seneca Nations of Indians asked that ORES Regulations include indigenous people within the official definition of "Person" and "require a pre-application meeting when a proposed project lies within the original Aboriginal territory of a recognized Indian Nation." Other changes in regulations were also requested.

1/4/21 Ms. Abrams to Art 10 DMM (and therefore the DEC and DPS) "The Nation writes to express its grave concerns about the Horseshoe Solar Project and Horseshoe Solar LLC's failure to acknowledge the high sensitivity of the Genesee Valley for cultural resources . . . Deficiencies in the Applicant's Phase IA Study, pointed out previously by the Nations, must be remedied prior to completion of the Phase IB Study. . . In addition, although the Applicant has indicated a willingness to consult with the Nation, as the Notice of Deficiencies points out, the Applicant has failed to provide critical information about . . . including ground disturbing activities, which are particularly important to the Nation; . . . alternatives to avoid damage to cultural resources. . . *The Nation also notes that the Applicant's Environmental Justice analysis fails to take into account impacts of the project on Indian Nations who [sic] cultural resources would be affected . . .*"

2/15/2021 President Pagels to Article 10 DMM "This letter reflects the Nation's formal position with respect to Invenergy's proposed approach to cultural resources for the remainder of the Project. As described below, we request that Invenergy engage in targeted Phase II surveying at the sites . . . in order to ensure the protection of the substantial cultural and historic resources located within the Project's area of potential effects ("APE").

The Study [Phase IB] repeatedly and mistakenly implies that only one Seneca village existed near the APE. . . . Statements like these imply that only those village locations which existed during the period of white settlement of the area are relevant to the Seneca's cultural and historic resources. This pattern of ignoring pre-contact Seneca history raises concern that the Study is only paying lip service to Seneca history. Invenergy's oversimplification of Seneca history and village location practices risks misleading the Siting Board. *But both the Seneca Nation and your office know better - Haudenosaunee groups would traditionally move their village location every 15-25 years . . .* Consequently, Seneca village sites are littered throughout the greater Project area (including within the APE). The archaeologists who informed Invenergy of the static location of one village omitted this essential information about Seneca practices for village location. The Nation also takes issue with the limited nature of Phase 1 B surveying methods for parcels which have indicators (including archeological and historical records) suggesting a village/burial site. Specifically, the Nation takes issue with piles being driven or drilled into the ground at a depth more than 12" at potential village sites, even where the Study's surface finds revealed minimal artifacts. The Nation again expresses its concern that without a Phase II study, these types of pilings are at risk of directly disrupting Seneca burial sites".

3/2021 President Pagels of the Seneca Nation of Indians (SNI) said: The Seneca Nation, like all indigenous people, is inexorably connected to the land. We take seriously our responsibility to safeguard our environment – as well as our history and culture – to preserve our legacy for the seven generations.

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6/21/21 Tubiolo summary letter to DPS/Andrew Davis is submitted to Art 10 DMM.

6/30/21 Interim Siting Board Chairman Howard to William McLaughlin on the Art 10 DMM “ In finding the application complete, I want to acknowledge the letter dated June 9, 2021, from the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP), which raises certain issues related to determinations made by OPRHP. These issues may appropriately be addressed in the next stage of the case.” These “certain issues” involve Indigenous habitation and the constantly remarked upon cultural sensitivity of the Project area.

8/2021 The Tubiolo Report is entered on the Art 10 DMM. Mr. Tubiolo's report “*Cultural Landscape of the Genesee Valley*” details the cultural sensitivity of subsoils the Horseshoe project as proposed would disturb. The report addresses specifically the findings of Horseshoe's Phase IB investigation reports. Mr. Tubiolo concludes that the Phase IB reports are seriously deficient, not for lack of understanding the density of resources or their context and setting. Horseshoe limited the scope of Panamerican's work by directing that soil samples be taken randomly at a depth of four inches. Even shallow sampling like this collected over 10,000 artifacts. Depending on whether Horseshoe elects to use single or double portrait racking for solar panels, between 40,000 and 80,000 piles would be driven 10 feet to 20 feet deep. In addition, foundation footings for 50-foot steel risers to carry interconnection lines, drainage ditches, trenching for underground electrical collection lines, access road construction, and culvert excavation would require excavation at depths substantially greater than four inches.

10/11/2021 The Town of Rush hosts a Teach-In Day discussion of Indigenous history and wampum belt and issues its second Indigenous Peoples’ Day Proclamation.

11/2/2021 The Tubiolo Report was delivered electronically and in hard copy to the SHPO Office. To date, SHPO has made no comment on the Tubiolo Report.

11/3/2021 The NYS Board on Electric Generation Siting and the Environment closes the Art 10 Proceeding and makes HSS subject to the provisions of 94-c and ORES.

2/7/2022 Herter (SHPO) to Edick (ORES) “As noted in our June 9, 2021 Adverse Impact determination letter, we recommend the submission of an archaeological construction monitoring plan. . .” SHPO has had the Tubiolo Report for 3 months and has made no comments even though attorney Abraham’s transmittal letter on Nov 2, 2021 noted that the Tubiolo Report called into question SHPO’s conclusions based on 4 inch sampling and restricted Phase IB analysis. The failure to find more archaeological sites is due to Invenergy’s Panamerican’s restricted methodology.

**Although the purpose of this chronology was to make the readers aware of the repeated concerns for ground disturbances in this incredibly rich, archaeologically distinctive area, it also puts the readers on notice that officials at the DEC, PSC and SHPO have been notified by the Nations and The Tubiolo Report that irreparable harm will be done if HSS defiles these leased lands in Rush.**



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### VI. HISTORICAL RESOURCES

Residents United to Save our Hometown has participated fully in efforts to document any threats to our historical resources as a result of HSS' proposal to cross the Genesee River and enter the Town of Rush.

As part of the Article 10 proceeding, the Town of Rush received a letter from Environmental Design and Research (EDR) seeking information on the historic resources of the town. The letter was sent to town officials including the town historian in May, 2019. EDR had been hired by Invenergy and one of its subcontractors, Panamerican, to collect information about historic resources visually impacted by Horseshoe Solar. EDR's instructions sought information on any potential visual impacts from Horseshoe Solar and information on historic resources within a 5-mile radius of the HSS-leased properties since the study area for large projects must extend a minimum of 5 miles from the project's facilities (16 CRR-NY 1000.2(ar)).

Because the EDR letter was sent to the historians in surrounding towns, a member of the Residents United Steering Committee met with the historians of Rush and Henrietta and talked by phone with the historian of Avon to assist them in understanding what Article 10 involved and why their inventories of historical resources would be important.

Ms. Susan Mee, town historian of Rush, sent EDR a 6-page letter listing cemeteries, one-room school houses, churches, Wells barns, museums, recreation areas like Oak Openings, properties on the CRIS (Cultural Resources Information System) database, areas of significance like Meadowood, homes of unique construction such as cobblestones and brick historical homes like Elm Place.

At several church meetings of Residents United to Save our Hometown there were signup sheets for individuals to register their homes, roads traveled frequently because the Article 10 regulations allowed such registrations. Again, many locations where there would be visual impacts from HSS were sent to EDR.

Some of the sites sent to EDR deserve special attention because of this highly sensitive archaeological and historical resource area.

- \* Oak Openings refers to a site in Rush characterized as a globally endangered ecosystem, one of only five in NYS. Within these ecosystems are rare plants and thriving wildlife. The Seneca used fire to create these savannas at the end of the 1700s. The Genesee Oaks are mammoth, centuries-old trees achieving this huge size because the fires used by the Senecas created space for the trees to grow without surrounding plant competition.
- \* Meadowood is a 30-acre area bordering the east side of the Genesee River at the extension of Stull Road. Many of the original trees and the formal gardens remain at this site originally built in the 1910s for the Wray family. Noted Rochester architect Claude Bragdon designed and built several houses there- a gentleman's country estate of the time. Charles Wray (1919-1985), past president of the NYS Archaeological Association was a noted archaeologist and scholar of the Seneca. Corbett Sundown, Hawk Clan Sachem Chief of the Seneca, attended Wray's funeral. Local museums often feature Meadowood arrowheads, collected in this area. During Rush's Bicentennial celebration, one of the Bragdon houses was on the house tour.

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- \* Elm Place is at the southernmost border of Rush and is the oldest brick house in the Genesee Valley. Colonel William Markham III came to the Genesee Valley in 1789 and was the first permanent European settler of Rush. He became Rush's first supervisor in 1818, holding town meetings in his living room. At this same location, in the early 1700s a settlement of Tuscarora lived having been expelled from the Carolinas during the 1714-1722 period. The Tuscarora joined the Five Nations (Mohawk, Oneida, Onondaga, Cayuga and Seneca) becoming the 6<sup>th</sup> Nation of the Iroquois League. During Rush's bicentennial celebration, Elm Place was on the house tour.
- \* Cobblestone structures. Cobblestones are a type of building construction that developed, flourished and then ceased within a fifty-year, pre-Civil War period in the Rochester area. More than 90% of the documented cobblestones exist within a 65-mile radius of Rochester. There are 106 within Monroe County and 7 within the Town of Rush. The cobblestone Rush-West Rush Firehouse is not included within the house count; it is next to the 1932 State Education Department Honeoye Valley sign proclaiming that "Three Indian Tribes have Hunted, Fished and Tilled the Soil Here for Thousands of Years" The sign is next to Honeoye Creek and less than a mile from Golah where Honeoye Creek joins the Genesee River. [From Freeman, *Cobblestone Quest* and Schmidt, *Cobblestone Masonry*]

Historian Mee's letter to EDR was dated July 1, 2019. Nothing was heard in return from EDR, Panamerican or Invenergy.

On May 5, 2020, John Bonafide, Director of Technical Preservation Services Bureau and Agency Historic Preservation Officer at SHPO wrote to Robert Hanley of Panamerican with copies to Charles Vandrei of the DEC and Andrew Davis of the PSC. The letter included a "Historic Properties List".

There are multiple items of note in the 5/5/2020 letter.

*First*, Bonafide reports receiving Panamerican's "Two-Mile Visual Architectural Survey", presumably as a result of EDR's subcontract. How can this be a two-mile survey in the Article 10 period when the study area for large projects must extend a minimum of 5 miles from the project's facilities? (16CRR-NY 1000.2(ar))

*Second*, Bonafide used this two-mile survey and determined that "the project area includes 3 properties that are listed in the New York State and National Registers of Historic Places ("Registers"). An additional 36 properties meet the requirements for inclusion in the Registers, 1 property was determined to be not-eligible for inclusion in the Registers and 12 properties lack sufficient information for a determination by this office. One additional property that was previously determined eligible has now been demolished."

Ms. Mee sent EDR six pages of information about properties within five-miles and Residents United sent additional materials as well. That information apparently NEVER reached the appropriate Office of Parks, Recreation and Historic Preservation. That said, cobblestone homes, Elm Place, a Wells barn and Meadowood/Bragdon homes were on the two-mile list.

*Third*, referring to Section 106 regulations, Bonafide defines the term adverse effects: "An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a

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historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.”

Referring to The National Park Service’s Bulletin 15, the term setting for a historic property is defined as “Setting is the physical environment of a historic property... Setting refers to the character of the place in which a property played its historic role.”

Fourth, on the basis of these definitions, and using a truncated two-mile visual list, Bonafide concludes that on the 1260 acres of proposed paneled land:

- "The concern will be the regimented linear industrial-looking rows that may be visible from the National Register listed and eligible properties.
- The project area’s landscape is generally open and agricultural in character.
- This rural setting is an important character-defining feature associated with the identified historic properties.
- The proposed long regimented rows of black, semi-reflective panels may be highly visible in the areas of the historic resources.
- The large solar arrays with their industrial form and scale will be incongruous with the surrounding natural agricultural setting.
- Potential glare and reflectivity at various times of the day are also of concern.”

The summative conclusion is that “our office has found **that the undertaking will have adverse effect on historic resources within the project’s area of potential effect.**”

Dr. Nancy Herter’s final pronouncement on the subject of historic resources was contained in her February 7, 2022 letter to Rudyard Edick of ORES “As noted in our Adverse Impact determination letter, we recommend . . . a historic preservation mitigation plan related to historic buildings.”

This analysis was completed while the HSS was within the Article 10 regulations 16CRR-NY 1001.24 (a) (10) which states “proposed mitigation and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, . . .”

Vitally important decisions must now be made if 16CRR-NT 1001.24 (a) (10) continues to be the regulation that applies. If ORES has superseded that regulation in the interest of more speedy renewable energy siting, then what is the legislative mandate for the Office of Historic Preservation?

Decisions:

Meadowood, a documented historic resource, rises above planned areas for installed solar panels; the typography means that in winter, Meadowood is “adversely affected”. Screening will likely also be of little use. Must HSS comply with “relocation or rearranging facility components” as defined by mitigation?

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What other identified historic resources are also “adversely affected” and how will the definition of mitigation be applied to them?

What about all the historic resources sent to EDR from a five-mile radius but apparently not sent to SHPO by Panamerican? How will the “adverse effect” be assessed for them?

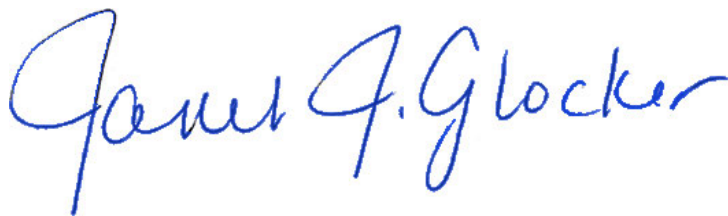
If mitigation takes the form of a fine/money, then that sum must be returned to the Town of Rush and cannot be subtracted from any negotiated pecuniary settlements.

## **VII. NYS REFUSES TO ACKNOWLEDGE THE TOWN OF RUSH’S EFFORTS!**

New York State created a series of renewable energy goals, related acts and specialized offices that focused on outcomes but neglected process.

- NYS did not provide local municipalities any opportunity to meaningfully participate in these efforts.
- NYS instead allied itself with industry to write State policy, override NY Constitutional Home Rule provisions, and forge ahead without any recognition of efforts made by local municipalities to contribute.
- NYS and its industrial partners did not adequately consider variations in insolation (i.e., the amount of energy delivered by the sun) across the State.
- NYS further diminished Constitutional Home Rule provisions by replacing Article 10 with USC Section 94-c. NYS chose not to evaluate the cumulative environmental impacts of implementing the Climate Leadership and Community Protection Act and the Accelerated Renewable Energy Siting and Community Benefit Act.

Respectfully submitted on behalf of the membership of the Rush citizen group,  
**Residents United to Save our Hometown,**



Janet Glocker, **RUSH** Chair

Matter of Horseshoe Solar Energy LLC  
ORES DMM Matter Number 21-02480  
Matter subtype 94-c Permit

Submitted for adjudicatory hearing in the above matter as full party status by Robin Rapport, previously ad hoc member of the PSC Siting Board in case 18-F-0633 in the matter of Application of Horseshoe Solar Energy LLC (HSS) for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of Horseshoe Solar Farm, a 180 MW Solar Electric Generating Facility Located in the Town of Caledonia, Livingston County and the Town of Rush, Monroe County, which is referenced in Matter Master 18-02413.

§900-8.4 (c) (1) This document is being submitted by:

*i.* Robin Rapport

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

*ii.* As the Town of Rush ad hoc member of the PSC Siting Board from July 2020 through October 2021. I have been a resident in the Town of Rush for almost 40 years, and my property is adjacent to Western, Northern and Eastern boundaries for the proposed utility solar build by the above applicant.

**A)** As the Town of Rush ad hoc member of the Article 10 proceedings for the above case, I was given access to multiple documents regarding the applicant's filings in this matter;



**B)** As a resident of the Town of Rush, if the HSS build pursuant this application goes forward, I will be directly impacted by any construction or operation activities as they affect my right to use and experience the quiet enjoyment of my home;

**C)** As a homeowner whose property is adjacent to the proposed sitings for the HSS, I will be affected by the presence of reflective arrays on my property's Western Boundary of the Genesee River, and potentially along the road leading to my home.

**iii.** I have no known direct or implied interests in any statutes relevant to this project.

**iv.** This petition is for full party status.

**v.** The grounds for opposition will be detailed in the adjudicable issues section (2) following, but in general are of two categories:

**A)** Filings or statements on the part of the applicant which do not appear to conform to the letter of PSL §164 or of ORES 94c.

**B)** Filings or statements on the part of the applicant which do not appear to conform to the spirit of PSL §164 or of ORES 94c.

#### §900-8.4 (c) (2)

**i.** Adjudicable issues

**I.** In the applicant's third version of its Public Involvement Program Plan for Article 10 filing {Case 18-F-0633 February 2019 (Rev. 2)}, the following statement is made:

"The Study Area is all areas within 2 miles of the Facility Site. While the Article 10 regulations suggest a five-mile study area radius, a smaller radius

is appropriate for solar projects as they have a relatively low profile. The panels including racking will not exceed 15 feet high.”

The applicant makes the point that since the highest point of the panels is less than “15 feet high”, that the Article 10 regulations “suggestion” of a 5-mile study area radius be ignored. And, as one of the topological features of this area of Rush and Caledonia is extremely hilly, my two-story home is not even visible from ½ mile away — but that is NOT the criteria for the Study Area.

The approximate 3800 acres which would be subsumed by the HSS development – fencing, clearing land, driving piles, laying underground cables, horizontal drilling across the Genesee River, rigging overhead cables, installing 600,000 rack-mounted solar panels – is according to at least one of their documents actually 3857 acres. This is 6.0267 square miles.

For a more concrete perspective, using the Empire State Building in Manhattan as a central point, the radius for a circle circumscribing this area would include the southern portion of Central Park to the North, past the East River to Hunter’s Point in Queens on the East, South to Washington Square Park, and West across the Hudson River to New Jersey.

While **Article 10, Appendix 1000.2 (ar)** states:

*"For large facilities or wind power facilities with components spread across a rural landscape, the study area shall generally include the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites. For facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues." (emphasis added)*

The phrase “the study area shall generally include” can be used as a throw-away admonition, and, in fact, seems to have been used that way by the applicant. Notwithstanding the fact that the regulation says **nothing** about the height of any components for allowing changes to the study area.

Note, however, that **CHAPTER X CERTIFICATION OF MAJOR ELECTRIC GENERATING FACILITIES SUBCHAPTER A REGULATIONS IMPLEMENTING ARTICLE 10 OF THE PUBLIC SERVICE LAW AS ENACTED BY CHAPTER 388, Section 12, OF THE LAWS OF 2011**, states in 1001.3 Exhibit 3 Location of Facilities (a) (5) that:

A study area for the proposed facility **generally related to the nature of the technology and the setting of the proposed site**. In highly urbanized areas, the study area may be limited to a one-mile radius from the property boundaries of the facility site, interconnections, and alternative location sites. **For large facilities or wind power facilities with components spread across a rural landscape, the study area shall include the area within a radius of at least five miles from all facility components**, interconnections and related facilities and alternative location sites. *For facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues. (emphasis added)*

This explicit requirement is repeated in the ORES 94c **§900-1.2 Definitions, subsection (bx)**.

The ORES 94c definitions state:

"(bx) Study area means the area generally related to the nature of the technology and the setting of the proposed site. Unless otherwise provided in this Part, in highly urbanized areas, the study area is a minimum one (1)-mile radius from the property boundaries of the facility site, interconnections and related facilities, and *for facilities with components spread across a rural landscape, the study area shall at a minimum include the area within a radius of at least five (5) miles from all generating facility components, interconnections and related facilities.*" (emphasis added)

This clarification in ORES 94c, as well as the prior excerpt from **Article 10, Appendix 1000.2 (ar)**, was contained in an email I sent as the ad hoc siting board member to the ALJ for Article 10 hearing (?), but I received no substantive response.

In compliance with Article 10, 1001.20b, Panamerican Consultants furnished a survey (***Two-Mile Visual APE Architectural Survey for the proposed Horseshoe Solar Project,...February 2020***) which utilizes the applicant's identical phrase:

"While the Article 10 regulations suggest a five-mile study area radius, a smaller radius **was determined appropriate** for solar projects due to their relative low profile." ***Was determined appropriate by whom?***

In a further comment I made to the ALJ I stated "in all of the HSS documentation I have seen (with the exception of edr's **Visual Impact Assessment, Appendix, Part 1**, [which did reference the visual area to a 5-mile radius from the HSS site]) **all** mentions of the study area have utilized only a TWO MILE radius. (The Raptor survey does not even venture outside the immediate location of the planned project site.) There is no indication from HSS as to why they decided to ignore the requirements in the above section (ar) when they plan to build over an extremely variegated topography — farmlands, woodlands, wetlands, animal migration paths, major rivers and streams, nesting areas and rookeries for geese and ducks, with a bounded area of 3969 acres."

No explanation was offered.

The Study Area is not constrained to boundaries of visual access. The Study Area includes evaluation of soils, topology and geological content. It is intended to include information about surface and subsurface water, aquatic, riparian, and woodland species, cultural and historical artifacts, buildings and scenic resources, animal nesting, rookeries and migration.

Based upon this mis-reading of the PSL Article 10 and ORES 94c regulations for the requirement of the Study Area for evaluation of the applicant's proposal, I recommend a halt in the continuation of the HSS project, ORES DMM Matter

Number 21-02480, until all requirements for permitting, including the expanded, and required study area, are complied with.

**//. Issues involved with the TWO-MILE VISUAL APE ARCHITECTURAL SURVEY FOR THE PROPOSED HORSESHOE SOLAR PROJECT, TOWN OF CALEDONIA, LIVINGSTON COUNTY, AND TOWN OF RUSH, MONROE COUNTY, NEW YORK. (NYSHPO# 18PR07941)** This document, submitted as the §1001.20b response from HSS, has some discrepancies which are identified following, making reliance on the overall accuracy of the contents of this document problematic.

My family has been resident in our current home 16 Meadowood since 1983, Susan Swanton has been resident in her home at 14 Meadowood since 2011.

Our properties have been in our, respectively, continuous possession since purchase, and documentation has been available from any Real Estate office, or town Records office. And yet, in the above referenced document, submitted in February of 2020, 37 years after my purchase and 9 years after Ms Swanton's purchase, the residence records are totally screwed up.

In Table 3.1, on page 3-5 SHPO USN 05516-000005reference lists Meadowood Swanton Residence as 14 Meadowood Rd. This would appear to be correct. But it also lists 05516-000006 as Meadowood Mayoue Residence at 14 Meadowood Rd. – Mayoue was the previous owner of 14 Meadowood who sold the house 9 years prior. These Meadowood addresses which are valid US Post office mailing addresses, do not reference a "Road", as Meadowood is a Private road and is not specified by the Town of Rush. On page 4-4 (of the above document) references the Swanton Residence as 16 Meadowood, not Rd. which is the correct usage, but now the SHPO reference number has changed (USN 0516.000005), and the (incorrect) Mayoue residence is referenced as USN 0516.000006 at 14 Meadowood (no Rd) — but these are BOTH incorrect: The Rapport residence (my



home) is 16 Meadowood, and the Swanton residence is 14 Meadowood. The errors are continued in Table 4.1 page 4-9 as 16 Meadowood is listed as Swanton Residence (should be Rapport residence) and 14 Meadowood is listed as Mayoue Residence (again sold 9 years prior) instead of the correct Swanton residence.

The prior owner of 14 Meadowood had started a home business in the late 1960s and referenced his address as Meadowood Estates. That conceit was passed down through the early Post Office station (which no longer exists) and has been propagated through references as varied as Google maps and the NYS/National Register of Historic Places. Meadowood Estates is the location 14 Meadowood.

Yet Table 5.1 on page 5-3 seems to make a distinction: The percentage of Area of Potential Effect (APE) visible from property is listed 22% for both 14 and 16 Meadowood, yet the entry for Meadowood Estates (identical to 14 Meadowood) is noted as 2.3% — a ten-fold reduction in visible APE for the same location.

Additionally, the distance from the residence to the APE is listed as 0.15 miles for 16 Meadowood, and 0.14 miles for 14 Meadowood, even though both face the same Eastern edge of Caledonia along the Genesee River, and 16 Meadowood is closer to the HSS site.

Yet, again on Table 5.1, 14 Meadowood, listed as 0.14 miles from the APE, while its alternate name of Meadowood Estates is listed as 0.17 miles from the APE.

Errors in such easily verifiable information indicate a pervasive lack of thoroughness and accuracy for the balance of this document.

Reliance for such a complex project as the Horseshoe Utility Solar array upon a massive, but, ultimately, unverified collection of data present in the above referenced APE, and other documents, casts a net of uncertainty over these submissions.

**III.** In Chairman Rhodes’ letter of deficiencies dated 31 August 2020 to Mr William F McLaughlin, an attorney for Invenergy Solar Project Development, LLC — the applicant under Article 10 case 18-F-0633 — required a response for these three specific issues to meet compliance to 16 NYCRR §1001.22(d), 16 NYCRR §1001.22(m), and 16 NYCRR §1001.22(n).

As of 22 December 2020, Mr William F. McLaughlin’s 17 responses, posted to the PSC’s DMM site as item numbers 61 through 77, inclusive, failed to address these three specific deficiencies.

In his letter to Mr Andrew Davis, NYS DPS, on 14 June 2021, Mr Gordon Gray, Director, Renewable Development, Invenergy, states that *HSS has complied with the request to address the deficiencies noted by Chairman Rhodes*, above, and expresses an elevated concern that the HSS project may “imperil the project schedule.”

He further claims that the OPHRP’s criticism of HSS’s “industrial form and scale” is in error because it is inconsistent with his reading of OPHRP’s prior decisions. Mr Gray’s position was that HSS did not feel that further alteration of HSS’ plan was required.

Based upon the information available in the DMM for this case, the three issues lacking compliance with 16 NYCRR §1001.22(d), 16 NYCRR §1001.22(m), and 16 NYCRR §1001.22(n), had still not been substantively addressed.<sup>1</sup>

The open issue of Lenape Resources (DMM items #59, #60) had not been addressed.

And the ongoing discussions between the subject matter experts, archaeologists, the Seneca Nation of Indians and HSS, from October 2020 through to June 2021 had still not been resolved.

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<sup>1</sup> HSS posted a response to these deficiencies dated 23 December 2021, *after* the Article 10 case 18-F-0633 had been closed.

Yet, in his letter of 30 June 2021, Mr John B Howard, identified as Interim Chair for the Board on Electric Generation and Siting and the Environment, advises Mr William F McLaughlin that “the Article 10 Application filed by Horseshoe Solar Energy LLC in the above referenced case, complies with Public Service Law (PSL) §164.”

Mr Howard continues, “In finding the application complete, I want to acknowledge the letter dated June 9, 2021, from the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP), which raises certain issues related to determinations made by OPRHP. These issues may appropriately be addressed in the next stage of the case.” Which was to be scheduled “within the next 60 days, pursuant to PSL §165.”

No corrective actions or petitions regarding these matters are posted by HSS or it’s agents for two-and-a-half months until 14 September 2021

On this date, with no clarifications or resolutions appearing on the DMM site, John Dax, following McLaughlin to the law firm of Hodgson Russ, requests a six week extension for subsequent Siting Board actions in this case.

After this 6-week delay, William McLaughlin files notice that “HSS is electing to be subject to Section 94-c of the New York State Executive Law (Section 94-c)”. In so doing, the process of the DPS decision process has effectively become an *in camera* proceeding. The ORES 94c process has removed any transparency to this application afforded through the Article 10 siting board.



## OFFICE OF THE RUSH TOWN SUPERVISOR GERALD KUSSE

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April 22, 2022

[general@ores.ny.gov](mailto:general@ores.ny.gov)

NYS Office of Renewable Energy Systems

Re: Written Public Comments on the Draft Permit for  
Horseshoe Solar Energy LLC – 21-02480

Dear Judge Caruso and Judge Sayre,

As Supervisor of the Town of Rush I believe it is my responsibility, among many other administrative duties, to also represent our residents, protect the pastoral character of our town, preserve our rural quality of life and our cultural heritage, protect our agricultural lands and operations, and to encourage and support appropriate development.

In its effort to combat and prepare for the impacts of global climate change, New York State has instituted an aggressive plan to shift away from fossil fuel use. The Town of Rush has likewise modified its zoning laws to permit the installation of renewable energy on roofs, in backyards and large-scale applications throughout the Town. The results of its efforts will result in Rush contributing a disproportionately large share of this effort when compared to the other towns, areas, and people of this state.

Unfortunately, in its efforts to move us all in this direction, New York State has failed to adequately address essential concerns including preservation of existing commitments to Home Rule and local governance, agriculture, historic heritage, and protection of cultural sensitive areas. For example:

- In a State in which only 5% of the land is prime farmland, it makes no sense to locate large solar facilities on such valuable land and thus weaken our food resource base which is also threatened by climate change;
- In a Town, like Rush that has passed its own solar law allowing 150 acres of large scale solar energy facilities on land across the town where it was previously prohibited, it makes no sense to arbitrarily waive requirements of the Town's Solar Energy Systems Law, especially when the applicant, Horseshoe Solar, has provided no specific justification for the requested waivers, and only offers the claim that the Town law is "Unreasonably Burdensome;"
- For a Town, like Rush, that will contribute: seven times what might be expected on a per town basis across the 931 towns in NYS, 12 times what might be expected on a per square mile basis in NYS, and over 37 times what might be expected on a per person basis in NYS, for the State to not even recognize the collaborative willingness of the Town to participate and to show some regard for these efforts, departs dramatically from a State that boasts Home Rule and local governance over related areas of control;
- In a Town that has been identified by Dr. Josalyn Ferguson at SHPO as unique in its Indigenous cultural heritage, rich in its related artifacts, and very meaningful in its spiritual relevance to descendant people, for the State to disregard its commitments over the years to protect and cherish such a legacy is disheartening, disrespectful, unnecessary and just plain wrong.
- In a public meeting, I asked HSS Manager, Marguerite Wells, if HSS had considered using State owned property in Rush and was told that dealing with the State is just too time consuming.
- I have twice been a signatory to the Article 10 DMM in which the Rush Town Board objected to the HSS proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Kusse".

Gerald Kusse, Town Supervisor

Office of Renewable Energy Siting  
Empire State Plaza  
240 State Street, P-1 South, J Dock  
Albany, NY 12242  
general@ores.ny.gov

RE: Written Public Comments on the Draft Permit for Horseshoe Solar Energy LLC - 21-02480

I attended the public hearing last night and although the many people who spoke against Horseshoe Solar were excellent, logical, well prepared and articulate, I am only disheartened, disillusioned and feeling hopeless. I know personally, as I have gone door to door in this town, that the majority of residents that LIVE HERE do not want this massive industrial solar power facility to surround our beautiful town and homes.

And just like the people who spoke up, I could talk about...

- The fact that it is racist, dishonoring and cruel to be so disrespectful of the Indigenous People and the burial sites of their ancestors. But it doesn't really matter, does it?
- The fact that you will be forever changing the beauty and landscape of our rural and residential town. But it doesn't really matter, does it?
- The fact that this monstrosity should be placed in an Industrial zoned area and not be surrounding our homes that we spent our hard-earned money on and worked so hard to build. But it doesn't really matter, does it?
- The fact that our property values and number of buyers for our homes will diminish because of these large-scale facilities that are literally enveloping homes. But it doesn't really matter, does it?
- The fact that the 'poor' farmers, that don't even live in this town, only want even more money than they already have, and already have more money than I will ever personally see in my own lifetime. But it doesn't really matter, does it?
- The fact that New York State has stated that they did not want these industrial facilities located on Prime Agricultural Farmland. But it doesn't really matter, does it?
- The fact that several agencies in New York actually disagree with putting in this large-scale industrial power plant along the Genesee River. But it doesn't really matter, does it?
- The fact that these ugly fenced in areas will most definitely affect the wildlife that have always been able to roam about freely and will now be restricted. But it doesn't really matter, does it?
- The fact that many, many species of animals and birds have already been negatively affected by all of these 'renewable' power plants all over the country. Just do the research. But it doesn't really matter, does it?
- The fact that in this area we get many cloudy days and therefore these panels will not be efficient. But it doesn't really matter, does it?
- The fact that Texas froze last year due to the 'reliability' of this inconsistent energy source. But it doesn't really matter, does it?



- The fact that these panels will most likely be made in China and we have no guarantees that they do not contain dangerous materials in them. But it doesn't really matter, does it?
- The fact that there are no assurances that our local wells will not be affected. But it doesn't really matter, does it?
- The fact that they do not have the ability to recycle the number of solar panels that are being made and that they will probably just end up in a land fill somewhere. But it doesn't really matter, does it?
- The fact that the environment is being destroyed and that there are now HUGE holes in the earth from digging for the materials that go into making these panels and batteries, but for some reason, as long as it's for solar, then the destruction of the earth and farmland is ok. But it doesn't really matter, does it?
- The fact that it takes a ton of fossil fuels to develop, maintain and expose of these supposedly 'green' energy sources. But it doesn't really matter, does it?
- The fact that we already have a renewable energy source in place that can already meet our needs in Western New York. But it doesn't really matter, does it?
- The fact that the batteries needed for solar to work are by no means 'green' and are known to contain hazardous chemicals and even spontaneously combust. But it doesn't really matter, does it?
- The fact that if these dangerous batteries do leak or explode, the toxic materials in them will totally contaminate any buildings or properties that they touch, and we would have to be evacuated from our homes. But it doesn't really matter, does it?
- The fact that a large group of citizens of this town spent many hours and much effort over a year and a half working on our local solar law only to be told that our laws don't matter, and that the Invenenergy company wants to be exempt from all the Town codes that we painstakingly put together. I guess laws only apply to us and not to the 'elites'. But it doesn't really matter, does it?
- The infuriating fact that two judges and two companies, who don't even live in this area are going to decide what is going to be forced down our throats in Rush and that we have absolutely no control over that decision. But it doesn't really matter, does it?

Thomas Sowell has an enlightening quote that is appropriate in this case...

'It is usually futile to try to talk facts and analysis to people who are enjoying a sense of moral superiority in their ignorance.'

All that matters is...you guessed it...money, money, money, and power, power, power. They can tell us all they want that this is about 'saving' the environment, etc., but we all know the truth. We ALL know that this is all about money and the elites long term plan to destroy our great state and our great country. **But I am asking you to do the right thing and NOT approve this disastrous, massive industrial project.**

The so-called leaders in this state are just following orders and will do whatever they want to and even though they are pretending to 'listen to the little people', it just doesn't really matter, does it?

And even though, it doesn't really matter, that will not keep us from fighting. At least I can look myself in the mirror and I can sleep soundly at night. Can you?

Sincerely,

Nancy Ast

Office of Renewable Energy Siting  
Empire State Plaza  
240 State Street, P-1 South, J Dock  
Albany, NY 12242  
general@ores.ny.gov

RE: Written Public Comments on the Draft Permit for Horseshoe Solar Energy LLC - 21-02480

I am a life-long resident of New York and I have lived in the Town of Rush for the last 36 years. I am a Professional Engineer licensed in the State of New York and have worked on a multitude of infrastructure projects over my 37 year career including transportation, water works, electric and natural gas utilities.

Please consider the following comments that this project will be not approved.

- The APA guideline for solar siting indicates that grazing land should be used rather than tillable farmland. The majority of the land being considered is prime 'bottomland', tillable farmland.
- Before the Mount Morris dam was built, much of this area was flooded during major storm events, which helped to enhance the farmland and creation of the oxbows sometimes referred to as 'horseshoes'. Also, many oak trees were planted in the farm fields to provide shade and a rest area for the farmers working the land. These are historic features that need to be protected. The solar arrays on the southern end of East River Road in Rush will impact one of these oak trees.
- The Genesee River Valley is an extremely valuable New York State resource due to the fact it is a major river, the flora and fauna along the corridor, recreational use on and paralleling the river, and the recent increase in eagle sightings along the river and the tributaries.
- The proposed sites for solar will be visible from 2 major trail park corridors. The Lehigh Valley Trail is a Monroe County Park that runs east-west on the northern edge of the project area and the Genesee Valley Greenway is a New York State Park that runs north-south in the middle of the project area. Users of this trail system will be admiring the beautiful nature around the trail and then seeing the industrial, mechanical solar facilities adjacent to the trails. Not the park-like view that is wanted or expected.
- Why is New York State considering solar projects at this scale when they will produce power 20% of the time, only during sunny days, and then degrades 20% over the life of the panels?
- The project sponsors claim that the panels are recyclable. Who is doing that now and how much does it cost now and in the future?
- Even the states of North Carolina and California are constructing gas-fired co-generation facilities to provide energy at times when renewables are not producing enough energy. Not reliable or sustainable.
- Invenergy is a company headquartered in Illinois with a store front office in NY. The majority landowner in the project area is Ceres Corporation that is headquartered in Indiana. Also, the current major supplier of solar panels is China. This project is not investing in New York companies or growing New York businesses.

- From a risk perspective, one has to look at the probability of an event and the consequence of the event. Although low in probability, there is a risk that a series of storm events could crest the Mount Morris Dam and the failure of the dam would put many of the solar panels in a flood area, a catastrophic consequence.

These are all compelling considerations for NOT siting or approving this project for either Livingston or Monroe County.

Sincerely,  
Carl W. Ast

John M. Kellen Jr.

04/27/22

To whom it may concern,

I am writing to express my concerns with a portion of the Horseshoe Solar Project and the effects it may have on my historic property. I currently own and reside at the John Hugh McNaughton House which is located at 3923 Caledonia Avon Road in Caledonia, NY (NYS Route 5). I am concerned about a specific section of the project which is labeled A1, A2, and A3 on Figure 2-2 on the Facility Layout Map. Section A3 will be both visible and audible from my historic property.

My home was built in the early to mid-1800's. It has graced this rural country side for nearly 200 years. The home and farm formerly belonged to the famous 19<sup>th</sup> century poet and musical composer John Hugh McNaughton (1829-1891). The home, which is referred to as the Babble Brook Homestead, was the setting which inspired much of his famous music and poetry. In fact, his first volume of work was entitled "Babble Brook Songs," which repeatedly described the landscape and wonderful views from this historic site. An article published by a family friend in the late 1800's notes the significance in this home and its landscape:

*"'Babble Brook,' the poet's home is three miles west of Avon, and within sight of the grounds where once stood the Council House of the Iroquois. The poet's residence was and is a capacious and tasteful dwelling, kept in thorough order, though, on account of being embowered in thick foliage, little of it can be seen over the trees, except the slate roof and chimnies. On the west side of his house are a croquet lawn and a range for rifle practice; in both of these diversions the poet took much delight. In the former recreation, on pleasant afternoons in summer, he was frequently seen engaged along with his wife, two daughters and his guests. It was his delight to entertain kindred spirits and friends at 'Babble Brook.' He was, himself, rarely from home, and the occasions were few indeed when there were not one or more literary visitors at his home in the summer season. Everything about 'Babble Brook' indicated a refined taste."*<sup>1</sup>

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<sup>1</sup> A.J. Abbot, "John Hugh McNaughton," *Annual Meeting of the Livingston County Historical Society: Volume 1* (1892) 26-30.

The Babble Brook Homestead, rightfully so, meets S/NRHP eligibility criteria based on numerous factors including A, B, and C of the national criteria, citing that it is associated with events that have made a significant contribution to the broad patterns of our history. Also it is associated with the lives of significant persons in or past. Lastly, it embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.<sup>2</sup>

The Babble Brook Homestead is work of art which is part of the rich history of Caledonia and the State of New York. It deserves preservation in its former farmland setting. Unfortunately, section A3 of the will be significantly visible from my home and poses a vast threat to the rural characteristic of the home which is repeatedly described in McNaughton's work. Given the topographic grading in this section, proposed screening options will not properly mitigate the cumulative effect of 1000s of solar panel surrounding this and other historic properties in this particular section of the Horseshoe project. The contrast between the rural setting of this home and hundreds of acres of linear commercial solar panels will be inconceivable.



John Hugh McNaughton Babble Brook Homestead Photographed By Yugoboy, July 31, 2012

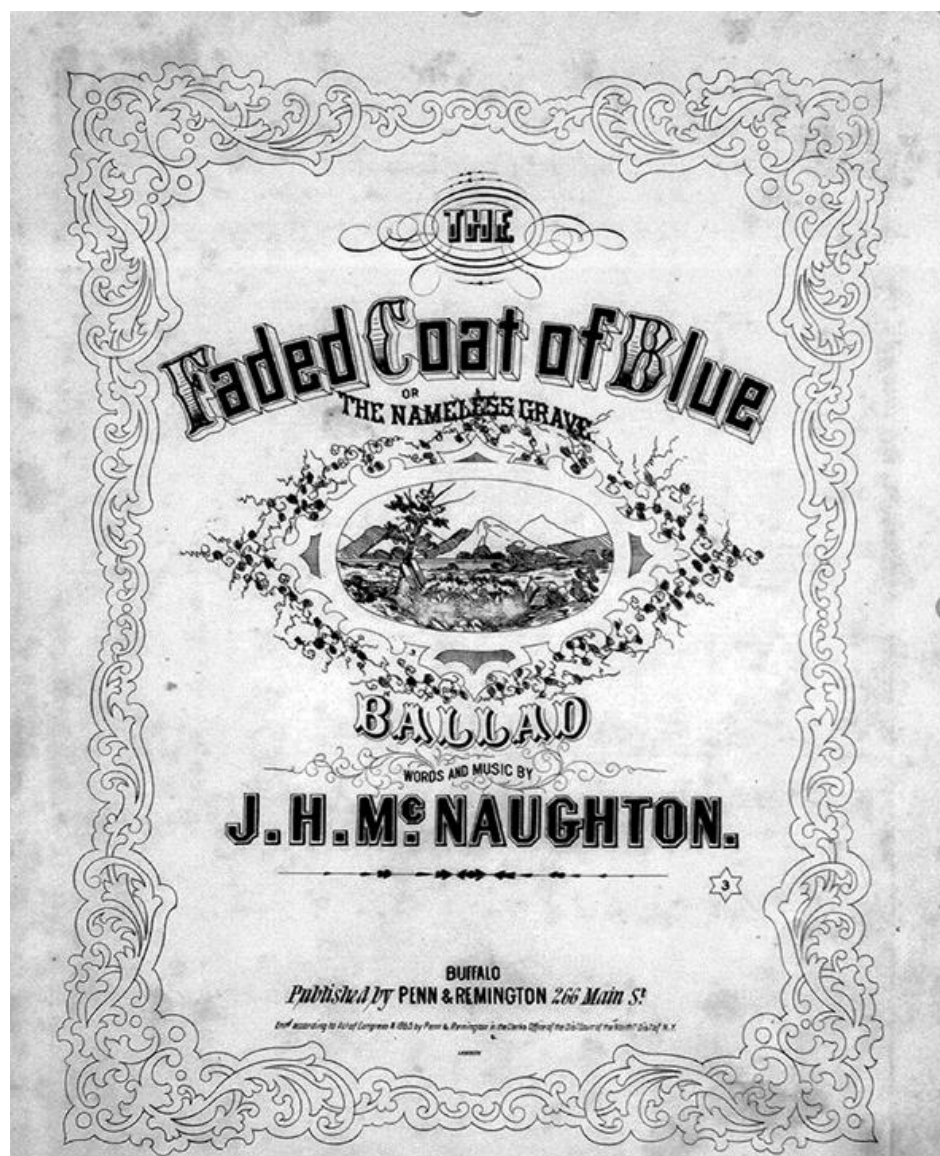
Two additional S/NRHP eligible locations will also be grossly affected by sections A1, A2, and A3. These include the Grave of the Unknown Soldier from the War of 1812. This is a

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<sup>2</sup> [https://www.nps.gov/fpi/Documents/NR\\_Criteria\\_Considerations.pdf](https://www.nps.gov/fpi/Documents/NR_Criteria_Considerations.pdf)



gravesite and monument dedicated to a fallen US Soldier. Due to the terrain in the area Sections A1, A2, and A3 will be fully visible from the gravesite despite the best efforts to mitigate it with screening. This monument and gravesite deserves protection from commercial development. The rolling countryside views have been preserved up until this point to provide a fitting dedication and memorial to a fallen soldier. By placing four fields worth of solar panels directly behind this grave you are dishonoring our fallen hero who deserve a scenic, peaceful resting place, not a fully visible and audible commercial solar development. Interestingly this memorial is engraved with the lyrics from John McNaughton's famous song, "Faded Coat of Blue." These two historical sites are connected in history and will soon be divided by an enormous commercial solar field.



Sheet music for "Faded Coat of Blue (The Nameless Grave)". Words and Music by John Hugh McNaughton. Copyright 1864 / 1865 Penn and Remington (in the public domain)

The last historical location affected by sections A1, A2, and A3 of the Horseshoe project is a fully restored Wells Barn located at 3956 Caledonia Avon Rd. in Caledonia, NY (NYS Route 5). This barn is located within a half mile of my home and the gravesite. This barn and home are also S/NRHP eligible. This is a historical barn designed by the famous architect John Talcott Wells Senior. Less than 50 of these barns are thought to be still standing. Obviously the nearby rolling farm lands contribute to the overall appearance and aesthetics of this rural historical farm known as Oak Knolls. Section A3 would be visible and audible from this location despite screening efforts.

Section 106 of the National Historic Preservation Act, criteria for adverse effect is defined as, "when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association." Examples of adverse effects are later defined in 36 CRP Part 800.5(2)(v) which states, "adverse effects on historic properties include, but are not limited introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features." Surely the placement of thousands of 17 foot tall solar panels within view of three historic properties would degrade the rural setting which plays a vital role in their preservation and history. This was reiterated in the May 5<sup>th</sup>, 2020 letter submitted to DPS by the New York State Division for Historic Preservation which reads:

"Of particular concern with large-scale commercial solar facilities is their impact on the "setting" associated with the identified historic resources. The National Park Service's Bulletin 15: How to Apply the National Register Criteria for Evaluation provides the following definition for the setting of historic property: "Setting is the physical environment of a historic property... Setting refers to the character of the place in which a property played its historic role." (NPSB 15, page 45) The proposed undertaking will include 600,000 solar panels on tracking racks and divided into several large array sections. The arrays will be set within a 3,857-acre project area. The arrays themselves will physically occupy and visually alter roughly 1,260 of those acres. The rows are relatively low in profile reaching at the upper edge less than 10-15 feet in height from the ground and will "track" the sun throughout the day. However, the concern will be the regimented linear industrial-looking rows that may be visible from the National Register listed and eligible properties. The project area's landscape is generally open and agricultural in character. This rural setting is an important character-defining feature associated with the identified historic

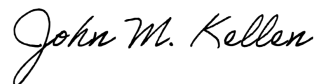
properties. The proposed long regimented rows of black, semi-reflective panels may be highly visible in the areas of the historic resources. We found that the large solar arrays with their industrial form and scale will be incongruous with the surrounding natural agricultural setting. In addition, potential glare and reflectivity at various times of the day are also of concern. As such, **our office has found that the undertaking will have adverse effect on historic resources within the project's area of potential effect."**

Per section 3-2 of the Panamerican Consultants Two Mile Visual APE report, provided by Invenergy, states, "No direct impacts to historic-architectural resources are anticipated as part of Facility construction or operation." This seems to directly contradict the fact the facility will be in full view and fully audible from three NRHP eligible locations. It also directly contradicts the statement from New York State Division for Historic Preservation which also recommended a Section 106 federal review of the application in their letter. To my knowledge this was never completed.

Also, per Figure A-3 in the Pre-Construction Noise Analysis the project will produce between 30-35 dBA of humming noise at my historic home and the other historic structures mentioned above. This will be audible to the human ear and degrades the rural historical setting of these structures.

Commercial solar farming is unfit near these visually sensitive resources. It does not fit the physical characteristic and setting of these locations which has been celebrated for the past two centuries. I would like to formally request the removal of sections A1, A2, and A3 to protect these three S/NRHP eligible properties. Although I understand the need for clean energy, removing a small section of prime farmland from the solar project to protect three historically significant locations seem like a reasonable request as this will not dramatically affect the overall goals of the project. Financial remediation for the effects on these properties should not be considered a reasonable option to destroy the character of these properties. At a minimum these locations should be further investigated and possibly arbitrated moving forward.

Respectfully,

A handwritten signature in cursive script that reads "John M. Kellen".

John M. Kellen Jr.

Megan Kellen

04/08/2022

To whom it may concern,

I am writing to convey my concerns about the upcoming Horseshoe Solar Project. I have been directly involved throughout the Article 10 and 94c process. I have continued to express my concerns throughout the project to Invenergy and the Town of Caledonia. Unfortunately, my concerns have not been addressed or even acknowledged for the most part. Although I understand the necessity of green energy, I would hope that communities could be involved in proper siting of these massive facilities as dictated by both the Article 10 and 94c process.

My first concern with project is the impact it will have on several historically significant locations and buildings within our small community near the section labeled A3 on the Facility Layout Map Figure 2.2. There are three specific NRHP eligible properties which deserve further evaluation, and one additional likely NRHP eligible property which was overlooked in the Panamerican Consultants Two-mile APE Study submitted by Invenergy which is dated February of 2020. All four locations lie within half of a mile of one another and panels from section A3 will be visible from all four historic locations despite proposed screening mitigation.

The first location is referred to as Oak Knolls Manor. This is the location of a beautifully restored Greek Revival home and more importantly a fully restored Wells Barn. The Welch family has painstakingly restored and preserved this barn over the past few years. Their Wells Barn is incredible and deserves future protection from commercial development such a massive solar arrays. As many people know this is one of the few remaining barns built by the famous designer John Talcott Wells, Sr. Our neighbors have painstakingly restored this barn to its former beauty. The beautiful rolling views of the Genesee Valley allow this barn to cater to a variety of special events, bringing extensive business to the area. By cluttering this view shed with industrial looking solar panels on a massive commercial scale, not only do you hinder their business and livelihood, but you also destroy the farmland setting essential to preserving the history of this architectural work of art. As you may already know the Wells Barns were recently placed on the Seven to Save Endangered Properties List designated by the Preservation League of New York State. More than 200 of these "country cathedrals" originally graced the rural countryside of Western New York. Now less than 50 remain intact according to recent



surveys.<sup>1</sup> The significance of this historical gem would be degraded by the placement of a massive commercial solar farm a few hundred feet down the road from it. By turning surrounding rolling farm fields to endless acres of commercial solar arrays, the preservation and character of this agricultural landmark would be diminished. This historically important barn and former farm deserves to be preserved in an agricultural setting.

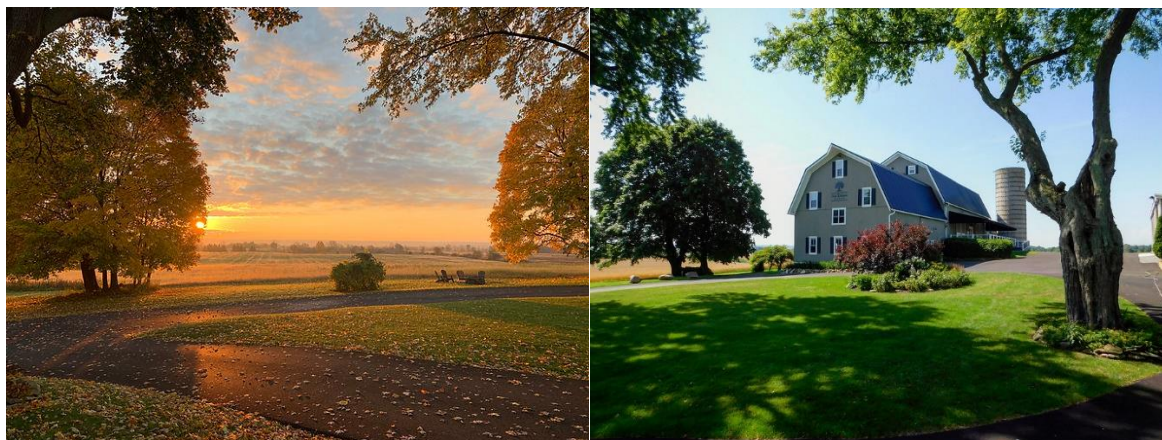


Photo credit [www.oakknollsmanor.com](http://www.oakknollsmanor.com)

Another significant home in this half mile stretch of roadway which will be affected by the current plan is the John Hugh McNaughton House. This location is marked by the New York State Education Department as a historical location. The home, which is referred to as the Babble Brook Homestead, was the setting which inspired much of his famous work. His first volume of poetry and songs was even named after the property. Published in 1864 this compilation of songs and poems repeatedly describes the area surrounding the home. Preserving this setting is vital to preserving this historical home. Per Invenergys' own 2-mile APE study the property is described as, "NRHP eligible under Criteria A and C. It's a good representative example of a highly intact mid-19<sup>th</sup> c. farmhouse with mixed stylistic elements. Though the property's acreage has reduced in size, the farm retains its agricultural setting and contributes to the overall rural character of Caledonia." Many of the rigid, linear, industrial looking panels from the project in portion A3 on the project layout map will be visible from the rear of the property with very little vegetative screening blocking the vast array. The sound will also be audible at this property per Invenergys' own noise assessment reports ranging from 30-35 dBD per their own mapping. An audible hum will surly degrade the historical setting of this home.

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<sup>1</sup> <https://www.preservenys.org/blog/seven-to-save-2018-19-edition>





Photo credit Oldhouses.com

The newly proposed layout will also be fully visible from the gravesite of the Unknown Soldier of the War of 1812 as well, which resides along the roadside of Route 5. This is located about half a mile down the road from the McNaughton House. This gravesite is actually inscribed with song lyrics written by John McNaughton himself. His famous song, "Faded Coat of Blue," which depicts the fallen soldier, is inscribed on this tombstone. The history of these two sites is tied together but will soon be divided by a giant commercial solar farm. This scenic gravesite intentionally overlooks the rolling hills of the Genesee Valley. The new proposed plan would put solar panels within a few hundred feet of the gravesite, cluttering the scenic view dedicated to a fallen US Veteran. The gravesite view will soon be a massive commercial solar farm, rather than a tribute to a fallen hero. This plan is completely disrespectful to the gravesite of an American Soldier. The scenic views associated with this gravesite should not be desecrated by a solar farm. Due to the topography of this area the panels will be nearly impossible to screen.

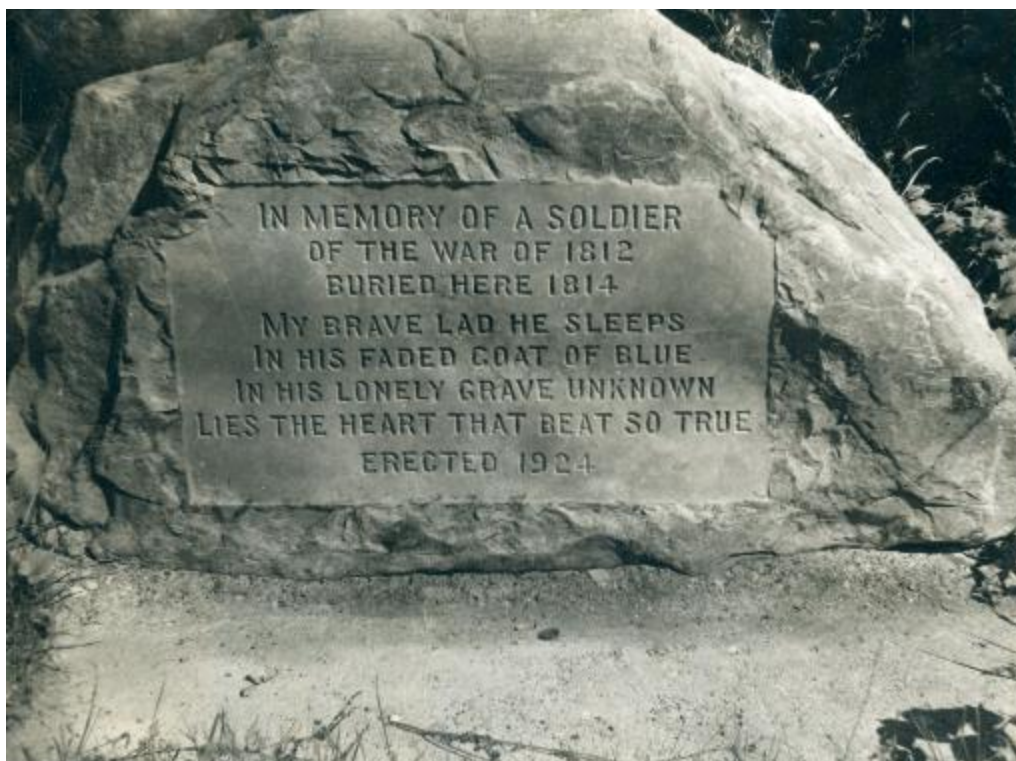


Photo credit <https://www.livingstoncounty.us/gallery.aspx?PID=433>



Figure 1: Location of proposed panels in Section A3





Figure 2: Additional Location of proposed panels in Section A3

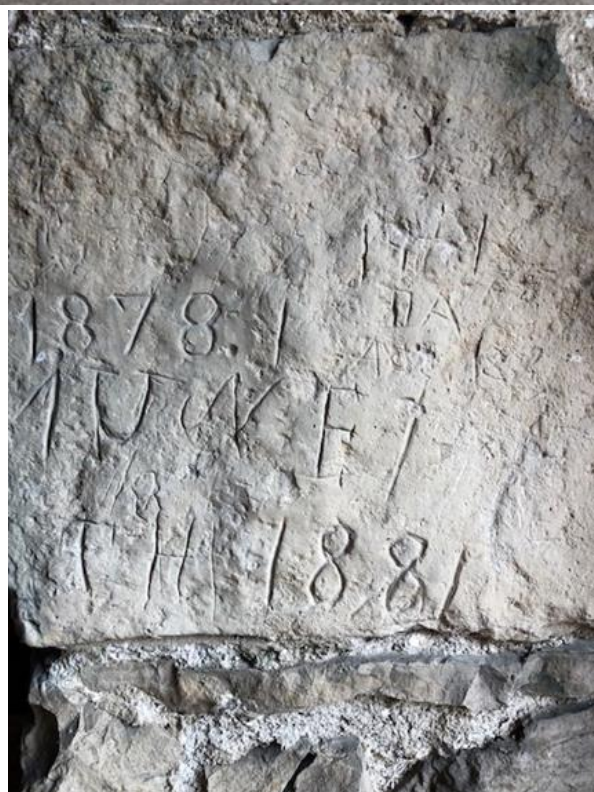
The last location of concern on this short stretch of roadway on Route 5 in is my personal home. I recently purchased my home at 3853 Caledonia Avon Rd. in Caledonia, NY and have begun the slow but necessary restoration on this beautiful Greek Revival Era home and barn dating back to the mid-1800s. I have always been drawn to historic buildings and find their charm and character unbeatable. Despite my very vocal concerns about this historic property, which is likely NHPR eligible, my home and barn continue to go unmentioned in the Panamerican Report. I notified Invenergy and The Town of Caledonia on many occasions, stressing the historical nature of my home. I met in person with Kate Millar from Invenergy on 10/8/29, 12/09/19, and 02/12/20 to discuss these issues. I also discussed my concerns in person with the Caledonia Town Supervisor Daniel Pangrazio in October of 2019. I discussed my home at several Town Board meetings, which at the time included in person representation from Invenergy as well. These meeting dates included 10/10/19, 12/12/19, 08/13/20, 06/10/21, and 02/10/22. I distributed a public comment in the Article 10 process voicing my concerns to both the town and Invenergy on 1/13/20. I also emailed the towns attorney on 4/9/22 with my concerns. Despite many attempts mitigate these concerns they continue to go unaddressed, let alone even acknowledged in APE study.

I have enclosed several photos of my home which demonstrate the characteristics of the Greek Rival Style from the mid-1800s, the period in which it was built. I believe it meets

criteria C making it eligible for NRHP status. The barn is dated 1878 and features local coursed, cut block limestone which was typical for the area nearly two centuries ago.







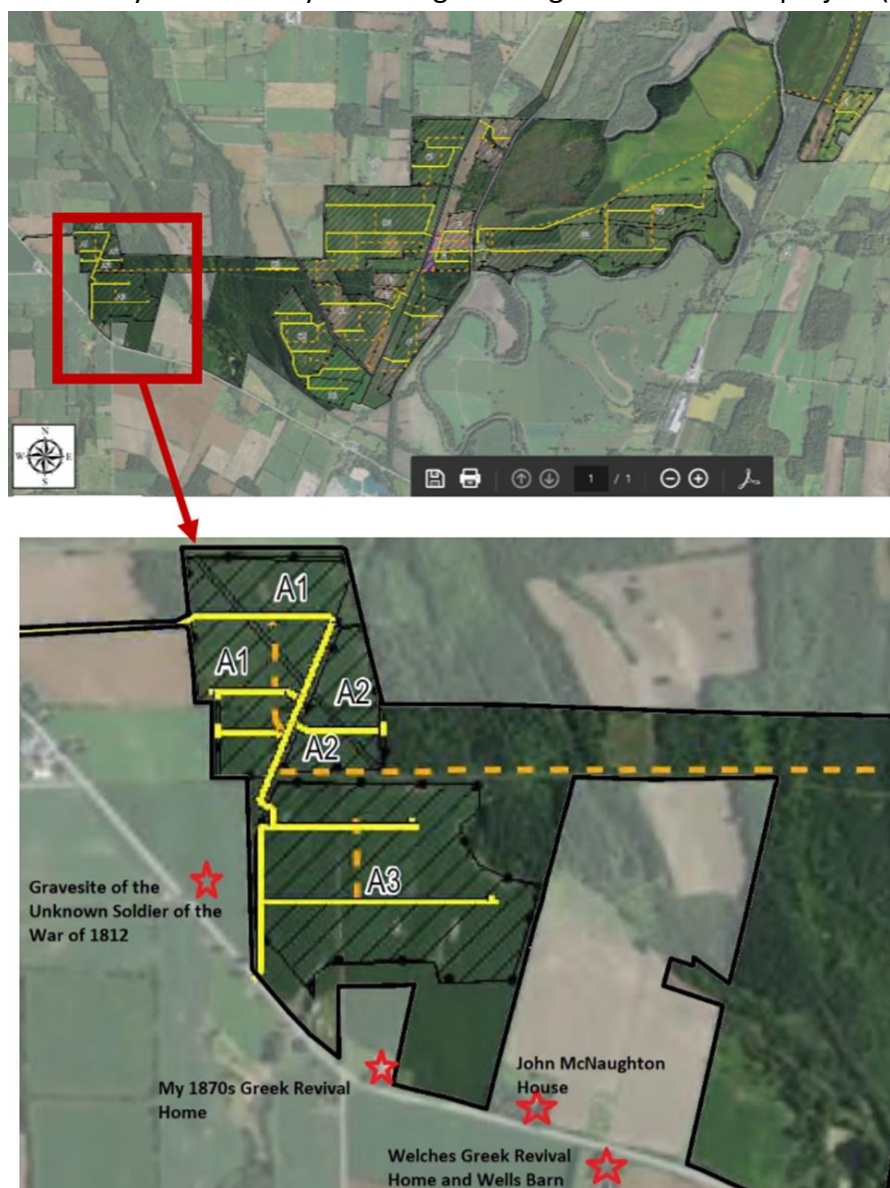


Despite my continued pressure I feel that my home was likely intentionally omitted from the study given its massive and unavoidable involvement in the project. This error seems egregious given that their own work plan (section 3.3 of the APE study) was supposed to include “Evaluation of potential NRHP-eligibility of architectural resources greater than 50 years old within those areas of project visibility.” How was my home missed when it is obviously marked on their own 1872 Atlas map noted in Figure 2.2 in the Panamerican Report? They didn’t think to do a site visit, validating their own information, and determine if this building from 1872 still stands? Especially a property that immediately abuts the project and is by far the most affected residential property in this entire 3800-acre project.

**Figure 2.2.** The approximate location of the project area in the Town of Caledonia in 1872 (*Beers 1872a*).

My mid-1800s Greek Revival Home noted on the Panamerican provided map from 1872

OPRHP stresses that the industrial form and scale of solar panels are incongruous with the surrounding agricultural setting, and indicated that this project would adversely impact historical locations. Although they did remove the Canawaugus Reservation Site based on this recommendation, Invenergy has failed to adequately address the concerns of the other historical locations mentioned previously. Per OPRHP they recommend a mitigation plan and historic preservation plan related to these properties. The mitigation plan set forth by Invenergy should not merely offer funding for the preservation of unrelated projects in hopes of offsetting the impact on these four properties. Destroying four historic locations should not be excused by merely throwing money at other unrelated historical projects. Especially when the impact can be easily remedied by removing one single section of the project (A3).



Although setbacks seem consistent with ORES standards, these standards do not take into account the massive size of the project and natural topography of rolling hills in the area which make adequate screening mitigation impossible.



Photo demonstrating the steep incline of section A3 Prohibiting reasonable screening efforts.

I fully understand the necessity of green energy, but I would hope it could be placed in areas that don't impact four historically significant locations within our small community. My small neighborhood on Route 5 doesn't have many homes but interestingly there is a great deal of history packed into this quarter mile stretch of Route 5. The rows and rows of solar panel and audible noise that will be produced in section A3 are incongruent with the tranquil rural setting essential to preserve these historic locations for years to come. They will adversely affect this area based on Section 106 of the National Historic Preservation Act. This was pointed out by OPRHP on 5/5/20 when they stated:

*"As defined by the Section 106 regulations: "An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association." (36 CFR Part 800.5) This section goes on to define examples of adverse effects, which include the: "Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features." (36 CFR Part 800.5(2)(v)) Of particular concern with large-scale commercial solar facilities is their impact on the "setting" associated with the identified historic resources. The National Park Service's Bulletin 15: How to Apply the*

*National Register Criteria for Evaluation provides the following definition for the setting of historic property: "Setting is the physical environment of a historic property... Setting refers to the character of the place in which a property played its historic role." (NPSB 15, page 45) The proposed undertaking will include 600,000 solar panels on tracking racks and divided into several large array sections. The arrays will be set within a 3,857-acre project area. The arrays themselves will physically occupy and visually alter roughly 1,260 of those acres. The rows are relatively low in profile reaching at the upper edge less than 10-15 feet in height from the ground and will "track" the sun throughout the day. However, the concern will be the regimented linear industrial-looking rows that may be visible from the National Register listed and eligible properties. The project area's landscape is generally open and agricultural in character. This rural setting is an important character-defining feature associated with the identified historic properties. The proposed long regimented rows of black, semi-reflective panels may be highly visible in the areas of the historic resources. We found that the large solar arrays with their industrial form and scale will be incongruous with the surrounding natural agricultural setting. In addition, potential glare and reflectivity at various times of the day are also of concern. As such, **our office has found that the undertaking will have adverse effect on historic resources within the project's area of potential effect.**"*

Section A3 fully encroaches on the historically and visually important views and landmarks associated with the history of Caledonia and NYS. This entire section of the Route 5 Corridor mentioned above should be consider a critical area due to its exceptional natural setting and vibrant cultural history which is sensitive to commercial and industrial change. I am politely requesting further review of this area and ultimately encouraging the removal of section A3 from the overall plan which will help preserve all four locations mentioned above. At a minimum I believe this issue requires a more thorough investigation and remediation during the determinations process. The possible need for further determination was echoed in the June 30th, 2021 letter from Interim Siting Board Chairman John Howard when he stated "In finding the application complete, I want to acknowledge the letter dated June 9, 2021, from the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP), which raises certain issues related to determinations made by OPRHP. These issues may appropriately be addressed in the next stage of the case."

As a separate matter, I also have legal concerns regarding the handling of the Article 10 and 94c siting process by the Town of Caledonia. It has recently come to my attention that there may have been some mishandlings by the Town Board when developing their new solar law which was put in place on 06/07/2021. The law was designed by an appointed solar committee which was personally selected by the Town Supervisor. This committee included Keith Stein, a current zoning board member, who is a part owner of section A3. He was under contract/lease agreement with Invenergy at the time he was appointed to the solar committee.



How can someone be appointment and allowed to offer official input on solar law effecting a project when they have already accepted funds from the applicant? I believe may this may be a violation Article 18 of New York's General Municipal Law and may nullify the current lease on parcel A3. As the Caledonia Town of Code explicitly states, "Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Town Board and any officer or employee of the Town of Caledonia, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation."<sup>2</sup> This issue appears to be a blatantly obvious code of ethics violation as he did not publically disclose his financial interest in the matter at hand. These local law decisions set forth by his actions directly impact the siting of section A3. This may also impact the standing of the PILOT program as the same committee helped design and regulate the need for a PILOT program. I feel that both issues need closer examination during the siting process and may provide additional grounds for removal of section A3.

I support the concerns of our Indigenous People as well. With respect to Indigenous consultation, NYSDEC states: "Human beings have been present in New York since the end of the last ice age, approximately 12,000 years ago when people followed retreating glaciers to take advantage of the opportunities provided by the newly opened landscapes. These people were the original occupants in New York. Like us, they had goals, desires, traditions and beliefs, which helped them work together to form communities. They interacted with one another, and ultimately with Dutch, British, French, and American settlers. Evidence of their cultural practices and ways of living is present in the archaeology of the state, the historical record, and in the oral tradition of the nations. Indigenous people (Native Americans) are still here." Why have the concerns of the Indigenous people been repeatedly ignored when it comes to the Horseshoe project? They have literally begged and pleaded with the state and Invenergy not to cause irreparable damage the lands of their ancestors in the Genesee Valley. It is well known that Genesee Valley has been densely populated by the Indigenous People for centuries. This dense habitation was due to the flooding and sediment of the Genesee River providing rich land for farming. The 10,000+ artifacts found during the Phase I Archeological Survey only represent a tiny fraction of what history is buried under this unique landscape. Clearly pile driving tens of thousands of racking systems 10-20 feet into the ground will cause irreparable harm to these artifacts. This doesn't even begin to touch on the plethora of suspected Native American burial grounds which will be desecrated throughout the valley if the project moves forward. Why would ORES and NYS allow an international, multibillion dollar energy company to come into NYS and destroy the heritage and burial sites of the Indigenous people despite repeat concerns from the community and the Seneca Nation. At a minimum a Phase II study should be

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<sup>2</sup> <https://ecode360.com/8753332>



considered using sonar technology that it available for this very purpose. It's time the government respects the wishes of the Indigenous People. As everyone knows the US Government has a long standing, notorious history of destroying this culture over the past few centuries. Approving the project in its current state furthers this well-known, disgraceful legacy of the cultural genocide being inflicted on the Indigenous People.

Lastly Invenergys' arguments to invalidate Caledonia and Rush Town Code seems unfounded and inappropriate as a whole. Caledonia town code states that only 50% of prime farmland fields should be used for large tier solar systems. I am sure you are well aware that this law is well backed by newer research being publish in regards to using Prime farmland for commercial solar farming. There are multiple studies in the works, including one at Cornell University specific to NYS, which suggest dense use of prime farmland for commercial solar is suboptimal due to a multitude of reasons. This is even backed by new bills proposed in NY legislature. Yet Invenergy claims they will lose too much space (aka profit) and need to redesign their project. The burden of their indiscretion when it comes to ignoring the local law, should not fall on the local communities. Especially when the communities have put time, effort and resource into designing local laws to provide guidance to these companies. Suggesting additional vegetative screening would be overly burdensome due to cost also seems like a widely inappropriate statement coming from a multi-billion-dollar company who is set to receive millions and millions of dollars in profit from this project. If they are truly committed to green energy and fighting climate change, then they should be fully committed to increasing green space with additional screening which meets the towns needs and local law. If I were setting up a local project, I would have to invest in this screening and meet town code. Why is a massive international company not being held to the same standards? They can afford the screening and ORES has the opportunity to set an example by enforcing town code. This example will hopefully expedite other future project by setting a precedent that the large companies should stop blatantly disregard local law and not challenge Home Rule Law.

Thank you for taking the time to read this. Your consideration and efforts are greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Megan Kellen". The signature is written in dark ink and is positioned above the printed name.

Megan Kellen

**ores.sm.General**

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**From:** Alex Page [REDACTED]  
**Sent:** Thursday, April 28, 2022 11:42 AM  
**To:** ores.sm.General  
**Cc:** Tonawanda Seneca Nation  
**Subject:** Comments of Tonawanda Seneca Nation on Horseshoe Solar Project, 21-02480  
**Attachments:** Ltr of Nation to SHPO re Horseshoe Solar Project 12.10.19.pdf; Ltr of Nation to Davis DPS re Horseshoe Revised Phase IA Rpt 4.30.20.pdf; Ltr of Nation to DPS re Horseshoe Draft Phase IB Etc 1.4.2021.pdf; Ltr of Tonawanda to ORES re Regs 12.7.20.pdf

**Categories:** Public Comment

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

On behalf of the Tonawanda Seneca Nation, I transmit the attached comments, which were also provided to DPS in Case No. 18-F-6033. Also attached is the Nation's letter to ORES on the need for early consultations by ORES with Indian Nations on projects that may affect cultural resources in their ancestral territories, an issue relevant to the Horseshoe Solar matter.

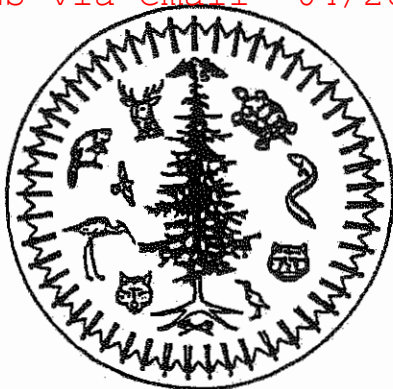
As expressed in these documents, the Nation opposes the Horseshoe Solar Project as currently designed because of the extreme sensitivity of the project area and the project's potential to impact Haudenosaunee burials and other cultural resources in the area.

--

**Alex Page**  
Attorney at Law

Berkey   
Williams LLP

616 Whittier St. NW | Washington, D.C. 20012 | 202-302-2811 | [www.berkeywilliams.com](http://www.berkeywilliams.com)



# HAUDENOSAUNEE

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## TONAWANDA SENECA NATION

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E-MAIL: tonseneca@aol.com

December 10, 2019

Josalyn Ferguson  
New York State Office of Parks,  
Recreation, and Historic Preservation  
Peebles Island State Park, P.O. Box 189  
Waterford, NY 12188  
Josalyn.ferguson@parks.ny.gov

Nya:wēh Sgē:nō', Ms. Ferguson:

Thank you for forwarding the October 2019 Phase 1A Report prepared by Panamerican in relation to the proposed Horseshoe Solar Project, 18PRO7941.

As a preliminary matter, the Nation has not been given the opportunity to review the "survey boundary polygon shapefile" or the "updated maps attached to William McLaughlin's... letter to Judges Lecakes and Villa," (Oct. 29, 2019 Letter of OPRHP to Andrew Davis, NYSDPS). Nor has the Nation been apprised of proceedings before the New York State Department of Public Service or had the opportunity to participate in such proceedings.

The Nation is very concerned with SHPO's finding that "the project's APE has changed substantially since the writing of" the October 2019 Phase 1A Report and now includes additional parcels on or near the Canawaugus Reservation, among others. (Oct. 29, 2019 Letter of OPRHP). Without accurate maps of the proposed APE, it is impossible for the Nation to assess the project's possible impacts. The Nation strongly objects to being asked to consult on a Report that appears to be based on an inaccurate / outdated depiction of the APE. The Phase 1A Report should be corrected and resubmitted for Nation review. In particular, the revised Phase 1A Report should include historic maps showing the accurate bounds of the proposed APE as they relate to the Canawaugus reservation and to known archeological and cultural sites. The Nation looks forward to reviewing a revised Report and providing comments on it.

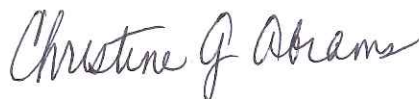
Page 2  
Horseshoe Phase 1A  
December 10, 2019

In the meantime, the Nation notes that Canawaugus Reservation remains treaty-protected Seneca land. The Genesee Valley is not only the heart of Seneca ancestral territory, but also contains federally-protected Seneca Reservations – including Canawaugus -- that have never been validly conveyed. While the Federal Trade and Intercourse Act, 77 Stat. 144, requires federal consent for the sale of treaty-protected Indian lands, the United States has never ratified or otherwise consented to the sale of Canawaugus. 28 Indian Cl. Comm. 12, 73-78 (1972).

Given the importance of this territory to the Nation and its status as a federally-protected Reservation, the Project Area should be moved to avoid the highly sensitive areas in and around the Genesee River and the Canawaugus Reservation. As the Phase 1A Report notes, it is already known that there are “multiple, small cemeteries...distributed” throughout the Reservation area. (p. 15). The project area is one of “the most important in the history of the Seneca.” (p. 21). In the last century, many Seneca ancestors have already been disturbed and desecrated in the area. (pp. 22-23). “Site files and historic accounts clearly indicate the project area is highly sensitive for burials.” (p. 43). The area has been subject to “intense occupation” by the Senecas and our ancestors from precontact times through the nineteenth century. As the Nation awaits a revised and corrected Phase 1A Report, we request that the project be relocated to avoid the area in and around the Canawaugus Reservation.

In addition, the Nation requests that the Tonawanda Seneca Nation be included as a stakeholder in any and all further proceedings related to this proposed project, including Department of Public Service proceedings under 16 CRR-NY X (“Article 10”).

Da:h ne'hoh,



Christine G. Abrams  
On behalf of the Council of Chiefs  
TSN Office Administrator  
Tonawanda Seneca Nation







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## TONAWANDA SENECA NATION

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January 4, 2021

Hon. Michelle L. Phillips  
Secretary to the Commission  
New York State Public Service Commission  
Agency Building 3  
Albany, NY 12223-1350  
Phone: (518) 474-2500  
Fax: (518) 474-9842  
Email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

Re: Horseshoe Solar Project, 18PR07941, PSC Case18-F-6033

Nya:wëh Sgë:nö', Hon. Phillips,

On behalf of the Tonawanda Seneca Nation, Council of Chiefs, I'd like to extend greetings to you and your associates and give thanks that all are enjoying good health.

The Nation writes to express its grave concerns about the Horseshoe Solar Project and Horseshoe Solar LLC's failure to acknowledge the high sensitivity of the Genesee Valley for cultural resources and its publication of confidential cultural images and information. The Nation urgently request that photographs and locational data related to cultural resources and potential cultural resources be redacted in all public postings, such as on the DPS Matter Master website, and that dissemination of such information be strictly limited to ensure its confidentiality.

As the Board pointed out in its August 31, 2020 Notice of Deficiencies, Horseshoe Solar LLC ("the Applicant") has not met Article 10 requirements for assessment of cultural resources. Nor has the Applicant fulfilled its obligations under the National Historic Preservation Act ("NHPA") or the National Environmental Protection Act ("NEPA"), obligations that inform its compliance with Article 10.

The Notice of Deficiencies focuses on the need for a completed Phase IB Study. To be minimally adequate, this study must closely examine the cultural and historical context of archaeologically sensitive areas in and around the Project's APE. This context is a fundamental and necessary component of any assessment of cultural resources in the area. While the



Applicant has maintained that “its recommendations are necessary limited to assessing the physical effects the project will have on the archaeological record” and that “a broader study of how the project relates to the history and traditional knowledge of the [Indian Nations]...of the Genesee Valley and Canawaugus [Reservation]...is beyond the scope” of the planned work, Draft Phase IB Study Plan 1, in fact the history of the area is a required component of the Applicants cultural resource assessment. *See, e.g.*, NYAC Handbook at 4 (Cultural resources are the collective evidence of the past activities and accomplishments of people. They include buildings, objects, features, locations, and structures with scientific, historic, and cultural value.”); *id.* at 9 (“archaeologically sensitive areas” include “locations...of spiritual importance” to Native peoples, as well as places near known prehistoric [archaeological] sites.”). Deficiencies in the Applicant’s Phase 1A Study, pointed out previously by the Nations, must be remedied prior to completion of the Phase 1B Study.

In addition, although the Applicant has indicated a willingness to consult with the Nation, as the Notice of Deficiencies points out, the Applicant has failed to provide critical information about engineering design, including for ground disturbing activities, which are particularly important to the Nation; impacts to wetlands; alternatives to avoid damage to cultural resources; and visual impacts. This information is necessary in order for informed consultation to take place.

The Nation also notes that the Applicant’s Environmental Justice analysis fails to take into account impacts of the project on Indian Nations whose cultural resources would be affected and whose reservation territory would be included in the Project’s APE. As the Nation made clear in its letter of December 10, 2019, the Canawaugus Reservation remains treaty-protected Indian land. Until and unless Congress explicitly diminishes or disestablishes the Reservation, its boundaries continue to define a territory to which the Tonawanda Seneca Nation and Seneca Nation of Indians have sovereign jurisdictional rights, *See, e.g.*, *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S. Ct. 2452 (2020). The Reservation is “tribal land” for the purposes of NHPA Section 106 and Seneca reservation territory for the purposes of CP-29, (Environmental Justice); CP-42 (Consultation with Indian Nations); and Article 10, Section 1001.28. Moreover, any determination by the Siting Board of public necessity for the Project requires specific assessment of effects on the Nation, which is part of “the public”, but faces uniquely destructive impacts from the Project.

The Nation looks forward to continuing to provide the Siting Board with information on this matter.

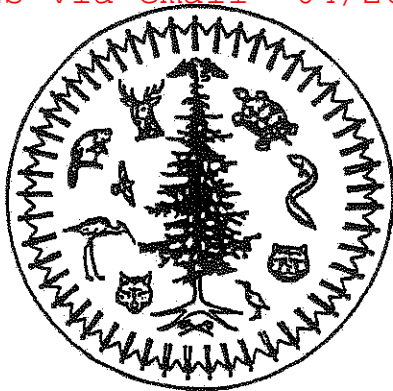
Da:h ne’hoh,



Christine G. Abrams

On behalf of the Council of Chiefs  
TSN Office Administrator  
Tonawanda Seneca Nation

cc: Nancy Herter, New York State Parks, Recreation and Historic Preservation  
Joe Stahlman, THPO, Seneca Nation of Indians



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December 7, 2020

Houtan Moaveni  
Deputy Executive Director  
New York State Office of Renewable Energy Siting  
99 Washington Avenue  
Albany, New York 12231-0001  
RE: Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-15)

Nya:wěh Sgě:nō', Mr. Moaveni;

On behalf of the Tonawanda Seneca Nation, Council of Chiefs, I'd like to extend greetings to you and your associates and give thanks that all are enjoying good health.

We understand your office is developing regulations to govern the siting of large electric generating facilities in New York. These regulations must ensure that the sovereign rights and interests of Indian Nations are respected. We request that the State of New York require, at a minimum, that Section 900-1.3 require an applicant to conduct pre-application meetings with Indian Nations whose ancestral territories may be affected by the project, just as meetings are required with local governments. Early consultation can help avoid situations in which an applicant unknowingly seeks to construct a project in a particularly sensitive area, such as an area where ancestors are buried or a location with particular spiritual significance. As a point of reference, applicants could use the "Areas of Interest" map developed by the Office of Parks, Recreation and Historic Preservation (OPRHP) in consultation with the Haudenosaunee and other Indian Nations. In pre-application meetings, applicants should provide Indian Nations with the full range of information provided to local governments, as laid out in Section 900-1.3(a).

In addition, Section 900-1.3(h)(2) should require that an applicant submit all Phase 1A surveys to Indian Nations and OPRHP when the surveys are submitted to ORES, to ensure the Nations and OPRHP are informed prior to decision-making regarding Phase 1B analysis.

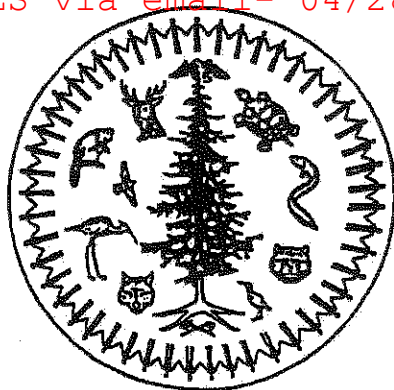
Finally, we recommend your office establish a position with responsibility for consulting with Indian Nations. Consultation must be done properly and successful consultations require time, effort, and

education. Only by building relationships with Indian Nations will your office be able to ensure renewable energy projects help and do not harm Indian Nations and their traditional territories. We thank you for your attention to this matter.

Da:h ne'hoh,

A handwritten signature in black ink, reading "Christine G. Abrams". The signature is fluid and cursive, with the first name "Christine" being more prominent than the last name "Abrams".

Christine G. Abrams  
On behalf of the Council of Chiefs  
TSN Office Administrator  
Tonawanda Seneca Nation



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April 29, 2020

Mr. Andrew Davis  
NYS Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223

Re: Horseshoe Solar Project, 18PR07941, PSC Case 18-F-6033

Nya:wëh Sgë:nö', Mr. Davis,

The Tonawanda Seneca Nation has reviewed the Horseshoe Solar Project Revised Phase IA/IB Report. The Nation continues to have concerns about the treatment of Haudenosaunee history and the potential for the Project to adversely impact ancestral Seneca territory. While the Nation reserves the right to provide additional comments in the future, we offer preliminary feedback below. In addition, the Nation attaches comments from historian Jare Cardinal, former Director of the Seneca-Iroquois National Museum.

Among other things, the Nation suggests:

1. Reviewing historical narrative for accuracy and correcting accordingly. For example, page 11 states that, prior to 1786:

*Although the land was physically open for European-American settlement with the relocation of the Haudenosaunee, border disputes between New York and Massachusetts, both of which claimed the new territory, frustrated the actual, legal sale of these lands. Under an agreement signed in Hartford, Connecticut, in 1786, the land once occupied by the Haudenosaunee came under the jurisdiction of New York State.*


The Genesee Valley was not "physically open for European-American settlement" in the 1770s and 1780s; it was the heart of Seneca territory. Haudenosaunee citizens used and occupied it and the historic Seneca Nation retained full legal rights to it under federal law, subject only to the right of first purchase (also known as the right of preemption) should the Nation choose to sell. Relatedly, the 1786 Hartford Compact did not establish any jurisdiction over the land or the Haudenosaunee; it merely settled a debate between New York and Massachusetts over their " respective rights of preemption.



2. Addressing inconsistencies among maps. For example, Figure 8 shows a portion of the APE extending into the northern portion of the Cannawaugus Reservation; while Figures 4, 6, 7 and 10 show the same portion of the APE lying fully outside the Reservation boundaries. (See also Gillette's 1858 map of Livingston County, which shows Cannawaugus Reservation boundaries more closely resembling those shown in the Figure 8 map:  
<https://www.loc.gov/resource/g3803l.la000515/?r=0.302,0.158,0.109,0.064,0> ).
3. Providing a map showing the location of the Genesee Oaks as they relate to the APE. On page 22, the Report states that "the Genesee Oaks are remnants of a pre-settlement, Seneca-maintained oak savannah subsequently protected on Wadsworth property."

We appreciate your time and attention to this matter. If you have questions, please contact Christine Abrams at the Tonawanda Seneca Nation office, (716) 542-4244, or by email at [tonseneca@aol.com](mailto:tonseneca@aol.com).

Da:h ne'hoh,



Christine G. Abrams

On behalf of the Council of Chiefs

TSN Office Administrator

Tonawanda Seneca Nation



cc: Josalyn Ferguson and Nancy Herter, New York State Parks, Recreation and Historic Preservation  
Joseph Stahlman, Seneca Nation of Indians  
Bryan Printup, Tuscarora Nation

**A few comments on Expanded Phase 1A Archaeological Investigation for the Proposed Horseshoe Solar Project, Town of Caledonia, Livingston County, and Town of Rush, Monroe County, New York  
NYSHPO #18PR07941**

Jaré R. Cardinal, consultant, Tonawanda Seneca Nation  
April 27, 2020

Although this report is a typical assessment of resources available for the region, it still misses the mark in defining aspects of Onöndowa'ga: and Ögwe'öweh history, land use and lifeways that will offer a more complete picture of the region for this type of report. As a whole, it adds little, if anything, of our understanding of the region prior to the invasion of American settlers, the influence of trade and cultural exchange of different people/groups prior to that aggression, a sense of specific groups that may have been there, and an overall knowledge of that history from other a non-Ögwe'öweh point of view. What new resources were used to expand this knowledge? Were people knowledgeable of these things included in this phase of the assessment (both Ögwe'öweh or even an ethnohistorian with a strong relationship with the Hodinöhsö:ni' or their allies). From reading the text and looking at the resources included in the bibliography, this doesn't seem to be the case. Instead, we have to always play "catch up" and allowed only a short amount of time to "comment". Issues such as these should not be subject to "comment", but should be an essential part of this research in order to understand the conclusions that are presented in this report. Otherwise, this is just an sterile exercise that clients and assessors can easily read (or more likely, not read) and continue to miss aspects of history that provide a clearer assessment of what happened in this region going back hundreds or even thousands of years.

More specifically, here are some comments that I find archaic and misleading:

- (1) Terminology: Why do these reports continue to use unclear, and often insulting, terminology? Words such as "prehistory", "PaleoIndian", etc, are made-up terms that archaeologists use to categorize the history of the Ögwe'öweh. Not only does historiography show that this terminology and categorization change, but they are not consistent from state to state. Why not use dates (or approximate dates, as even those are arbitrary)?

What is most insulting is the use of the term "history" only after there has been contact with Europeans/Americans. What happened before this? This division/categorization is one of the most offensive of the terms used. Such a division has not been used by historians since the 1970s. When are archaeologists going to catch up? Such terminology sets the reader/client up for all sorts of conclusions associated with that term. In addition, the word "precontact" implies that Ögwe'öweh must have lived in isolation. Did they not come into contact with other people prior to 1550?

- (2) A litany of events recorded in county histories of Onöndowa'ga: living in the region, limits the understanding of land use, other people who lived there (even simultaneously), or even the extent of occupation. Ögwe'öweh living was more than the aspects of village sites or burial grounds. They were not confined by their homes or "camps" (and what are camps anyway?). What aspects of this life away from the village were considered in this phase 1 report? Are they important, too? How do you know what to look for and/or analyze in a phase 2 report, if these elements are not defined in phase 1?

- (3) Resources: What new resources, published or not, have been cited here that expand our understanding of the region? I understand this is basically an archaeological report (after all, the word is used in the title), but there are many other resources out there than can expand our understanding of history and land use prior to the same old published reports. When are some of these resources going to be included and assessed? This includes Onöndowa'ga: and Ögwe'öweh languages, interpretation of archaeological artifacts, stories that relate to these time periods, etc, findings in 18<sup>th</sup> and 19<sup>th</sup> century land surveys. The inclusion of these resources would go far in interpreting the past and importance of this region. By investigating and including such resources, the reader/client/assessor would be able to understand better that life, events, and energies were expended on both sides of the river, not just in a village or a burial site. Not everyone was confined to a village. For example, there were people who came to the region to be under the protection of the Onöndowa'ga:, but who did not live in their villages. Old resources cited here do not consider those situations.
- (4) Historical perspectives: As most of these types of reports do, the analysis is totally from a biased, academic viewpoint that leaves "the other" out of the equation. With the exception of throwing a few "famous" names in that are readily identified, little else is presented. Why was Canawaugus important and continues to be important today? Who were the people that lived here and what impact did they have on Onöndowa'ga: and Ögwe'öweh history?
- (5) Understanding the Genesee River itself: It has long been known that the Genesee is a constantly changing river. Although a lot has been documented and said about the geological aspects of the region, why is no mention made of the importance of the river itself to human occupation and how its historic alterations impacted the region, or even how those changes may impact the ability to find archaeological resources. And most importantly, how do the resources provided by that river have an impact on people living there over time?

The above just gives just a few specifics as to why this report, though thorough in some aspects, is so wanting in others. If the reader/client is to have a comprehensive understanding of the area that it wants to develop and what destruction it will do to the cultural resources (including elements of history and spiritual connections that Ögwe'öweh still have for this region today), these things need to be included.

## ores.sm.General

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**From:** Bethany Choate [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:10 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I live in close vicinity to the proposed Horseshoe Solar site in Rush, NY and wish to make my ardent support known. I believe it is critical to be responsible stewards of Earth and support clean energy efforts. I have the pleasure of my own solar array atop my net-zero home, but knowing that not all people have the means or situation (or motivation...) to do the same makes large-scale installations all the more needed. I do as much as I can to protect the planet to ensure a safe and healthy environment for my son and all future generations, and I would be proud to live in a town that shares this commitment. I have been very disappointed by the vocal dissenters, false information spreaders, and town government for not leading in this regard. It's time to move this project forward.

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

Horseshoe Solar will bring tremendous economic benefits to Monroe and Livingston Counties, including \$30 million in local economic investment that will fund our schools, our roads and bridges, public safety, and healthcare. This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits. In addition, the project will create 300 good-paying, local jobs during construction and additional high-skilled, permanent jobs once in operation.

Horseshoe Solar will also add 180 MW of clean power to New York's grid, powering up to 50,000 homes each year with reliable, emission-free energy.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Bethany Choate  
[REDACTED]

## ores.sm.General

---

**From:** Frank Dimartino <frank.dimartino@local435.org>  
**Sent:** Saturday, April 30, 2022 10:03 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

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For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Frank Dimartino  
frank.dimartino@local435.org  
Batavia , NY 14020



## ores.sm.General

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**From:** dean estes [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:20 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

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For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

dean estes  
[REDACTED]

## ores.sm.General

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**From:** John Heyneman [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:18 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

Horseshoe Solar will bring tremendous economic benefits to Monroe and Livingston Counties, including \$30 million in local economic investment that will fund our schools, our roads and bridges, public safety, and healthcare. This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits. In addition, the project will create 300 good-paying, local jobs during construction and additional high-skilled, permanent jobs once in operation.

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For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

John Heyneman  
[REDACTED]

## ores.sm.General

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**From:** Kathleen Krenzer-Stein [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:17 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

Horseshoe Solar will bring tremendous economic benefits to both Monroe and Livingston countries. This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits. In addition, the project will create many local jobs during construction.

Horseshoe Solar will continue to use land for agriculture and will maintain its natural environment.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Kathleen Krenzer-Stein  
[REDACTED]

## ores.sm.General

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**From:** Kim Snyder [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:12 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

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Horseshoe Solar will also add 180 MW of clean power to New York's grid, powering up to 50,000 homes each year with reliable, emission-free energy.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Kim Snyder  
[REDACTED]

## ores.sm.General

---

**From:** Austin Kuntz <akuntz@nyslof.org>  
**Sent:** Saturday, April 30, 2022 10:06 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

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Horseshoe Solar will also add 180 MW of clean power to New York's grid, powering up to 50,000 homes each year with reliable, emission-free energy.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Austin Kuntz  
akuntz@nyslof.org  
ROCHESTER, NY 14624



## ores.sm.General

---

**From:** Elizabeth Marshall [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:08 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

Horseshoe Solar will bring tremendous economic benefits to Monroe and Livingston Counties, including \$30 million in local economic investment that will fund our schools, our roads and bridges, public safety, and healthcare. This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits. In addition, the project will create 300 good-paying, local jobs during construction and additional high-skilled, permanent jobs once in operation.

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For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Elizabeth Marshall  
[REDACTED]

## ores.sm.General

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**From:** Thomas McHale [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:15 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

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Horseshoe Solar will also add 180 MW of clean power to New York's grid, powering up to 50,000 homes each year with reliable, emission-free energy.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Thomas McHale  
[REDACTED]

## ores.sm.General

---

**From:** Marshall Smith [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:22 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will help to move us closer to energy independency and free us from our fossil fuel addiction, as well as the related air and water pollution associated with oil and coal based energy production. Invenergy has a workable plan to utilize currently low-producing farmland and to help to bring it back to productive levels over the lifetime of the project. I am satisfied with the due-diligence and study of the relevant data that this is a direction that the Caledonia community should proceed.

Thank you for the opportunity to contribute my thoughts.

Marshall Smith, PhD  
Professor Emeritus  
Rochester Institute of Technology

Marshall Smith  
[REDACTED]

## ores.sm.General

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**From:** Tom snyder [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:09 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

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For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Tom snyder  
[REDACTED]

## ores.sm.General

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**From:** Suzanne Stokoe [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:22 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

Our farming family has been stewards of our land in this community since 1812. I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

Horseshoe Solar will bring tremendous economic benefits to Monroe and Livingston Counties, including \$30 million in local economic investment that will fund our schools, our roads and bridges, public safety, and healthcare. This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits. In addition, the project will create 300 good-paying, local jobs during construction and additional high-skilled, permanent jobs once in operation.

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For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you,

Suzanne Stokoe, 6th Generation Farmer

Suzanne Stokoe  
[REDACTED]



## ores.sm.General

---

**From:** Greg Stokoe [REDACTED]  
**Sent:** Saturday, April 30, 2022 10:14 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

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Horseshoe Solar will also add 180 MW of clean power to New York's grid, powering up to 50,000 homes each year with reliable, emission-free energy.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

As Greg Stokoe, the owner of land where a portion of this solar project is to be located, I am for the approval of the project. The approximately 100 acres of my land that is marked to be included in this project is a small percentage of our overall farmland and will not affect our overall farming capacity. This is the singular project that our land is being considered for. Additionally, being a larger overall project, it will also be more efficient and will be able to benefit a wider array of people. This project is also beneficial for the future in many ways. Including reducing the overall carbon footprint and will help to provide a sustainable source of energy for many years to come.

Thank you.

Greg Stokoe  
[REDACTED]

## ores.sm.General

---

**From:** Salvatore Victorious Jr <sal.victorious@local435.org>  
**Sent:** Saturday, April 30, 2022 10:05 AM  
**To:** ores.sm.General  
**Subject:** 21-02480: Public Comment on Horseshoe Solar

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

To whom it may concern,

I support the Horseshoe Solar project because it will provide locally-sourced clean energy and economic investment for the Finger Lakes, all while supporting New York's clean energy goals.

Horseshoe Solar will bring tremendous economic benefits to Monroe and Livingston Counties, including \$30 million in local economic investment that will fund our schools, our roads and bridges, public safety, and healthcare. This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits. In addition, the project will create 300 good-paying, local jobs during construction and additional high-skilled, permanent jobs once in operation.

Horseshoe Solar will also add 180 MW of clean power to New York's grid, powering up to 50,000 homes each year with reliable, emission-free energy.

For these reasons, I'm proud to support the development of Horseshoe Solar and urge New York State to advance the project forward.

Thank you.

Salvatore Victorious Jr  
sal.victorious@local435.org  
Rochester, NY 14624

**"Justice, Honor, Strength"**

**LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
LOCAL No. 435**

**20 FOURTH STREET ROCHESTER, NEW YORK 14609  
PHONE: 585-454-5800 FAX: 585-454-5411**



April 27<sup>th</sup>, 2022

Office of Renewable Energy Siting  
240 State Street  
P-1 South, J Dock  
Albany, NY 12242

Dear Office of Renewable Energy Siting,

I am a member of Laborers' Local 435 and I have lived and worked in Monroe County for many years as a construction laborer. I am writing to you today to show my support for the Horseshoe Solar project. Our area needs higher paying, higher skilled jobs that solar projects bring; not to mention the significant impact it would have on the community. Local families, future generations, and I depend on projects like Horseshoe Solar to provide for one another. I hope you consider allowing this project to prosper.

Thank you for your time.

Respectfully,

Laborers' Local 435

**"Justice, Honor, Strength"**

**LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
LOCAL No. 435**

**20 FOURTH STREET ROCHESTER, NEW YORK 14609  
PHONE: 585-454-5800 FAX: 585-454-5411**



April 27, 2022

Dear Office of Renewable Energy Siting,

I am writing to you today to express my support for the Horseshoe Solar project. I am a member of Laborers' Local 435 and live and work in Monroe County. I rely on construction work created by infrastructure development such as solar projects. Having personally worked on several construction projects throughout the area, I can say that projects like Horseshoe Solar would help strengthen our community. They have a major impact on individuals, like me, who work on those projects by supporting our families and communities, not to mention the beneficial impacts it can have to the host town.

By allowing solar development in Monroe County, you will dozens of hardworking, tax paying citizens who rely on these construction jobs to make a living.

Thank you for your time.

Sincerely,

Laborers' Local 435

**"Justice, Honor, Strength"**

**LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
LOCAL No. 435**

**20 FOURTH STREET ROCHESTER, NEW YORK 14609  
PHONE: 585-454-5800 FAX: 585-454-5411**



27 April 2022

To Whom It May Concern,

Solar is one of the fastest growing industries in the country, creating thousands of jobs from construction to operations and maintenance. New York has incredible opportunity to build solar that will support our transition to clean energy, all while creating good-paying jobs and economic stimulus for local communities.

As a member of LiUNA, I support the Horseshoe Solar project because it presents a new economic opportunity for the Finger Lakes region. The project will create more than 300 good-paying, family-sustaining construction jobs and additional high-skilled, permanent jobs once in operation. These jobs will allow workers to support their families as well as local businesses and the economy.

In addition to job creation, Horseshoe Solar will also bring more than \$30 million in economic investment that will help improve schools, roads and bridges, public safety, and healthcare in the local community.

We do not want our community to miss out on the incredible economic opportunities presented by the solar industry. The Horseshoe Solar project will bring economic development and hundreds of jobs to the region, all while supporting New York's clean energy goals.

Sincerely,

Business Agent  
Laborers' Local 435



**"Justice, Honor, Strength"**

**LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
LOCAL No. 435**

**20 FOURTH STREET ROCHESTER, NEW YORK 14609  
PHONE: 585-454-5800 FAX: 585-454-5411**



April 27<sup>th</sup>, 2022

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240 State Street  
P-1 South, J Dock  
Albany, NY 12242

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Thank you for your time.

Respectfully,

Laborers' Local 435

**"Justice, Honor, Strength"**

**LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
LOCAL No. 435**

**20 FOURTH STREET ROCHESTER, NEW YORK 14609  
PHONE: 585-454-5800 FAX: 585-454-5411**



April 27<sup>th</sup>, 2022

Office of Renewable Energy Siting  
240 State Street  
P-1 South, J Dock  
Albany, NY 12242

Dear Office of Renewable Energy Siting,

I am a member of Laborers' Local 435 and I have lived and worked in Monroe County for many years as a construction laborer. I am writing to you today to show my support for the Horseshoe Solar project. Our area needs higher paying, higher skilled jobs that solar projects bring; not to mention the significant impact it would have on the community. Local families, future generations, and I depend on projects like Horseshoe Solar to provide for one another. I hope you consider allowing this project to prosper.

Thank you for your time.

Respectfully,

Laborers' Local 435

**"Justice, Honor, Strength"**

**LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
LOCAL No. 435**

**20 FOURTH STREET ROCHESTER, NEW YORK 14609  
PHONE: 585-454-5800 FAX: 585-454-5411**



April 27, 2022

Dear Office of Renewable Energy Siting,

I am writing to you today to express my support for the Horseshoe Solar project. I am a member of Laborers' Local 435 and live and work in Monroe County. I rely on construction work created by infrastructure development such as solar projects. Having personally worked on several construction projects throughout the area, I can say that projects like Horseshoe Solar would help strengthen our community. They have a major impact on individuals, like me, who work on those projects by supporting our families and communities, not to mention the beneficial impacts it can have to the host town.

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27 April 2022

To Whom It May Concern,

Solar is one of the fastest growing industries in the country, creating thousands of jobs from construction to operations and maintenance. New York has incredible opportunity to build solar that will support our transition to clean energy, all while creating good-paying jobs and economic stimulus for local communities.

As a member of LiUNA, I support the Horseshoe Solar project because it presents a new economic opportunity for the Finger Lakes region. The project will create more than 300 good-paying, family-sustaining construction jobs and additional high-skilled, permanent jobs once in operation. These jobs will allow workers to support their families as well as local businesses and the economy.

In addition to job creation, Horseshoe Solar will also bring more than \$30 million in economic investment that will help improve schools, roads and bridges, public safety, and healthcare in the local community.

We do not want our community to miss out on the incredible economic opportunities presented by the solar industry. The Horseshoe Solar project will bring economic development and hundreds of jobs to the region, all while supporting New York's clean energy goals.

Sincerely,

Business Agent  
Laborers' Local 435



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April 27<sup>th</sup>, 2022

Office of Renewable Energy Siting  
Empire State Plaza  
240 State Street; P-1 South, J Dock  
Albany, NY 12242

To Whom It May Concern,

As a Livingston County resident and proud member of Laborers' Local 435, I am writing to you today regarding the proposed Horseshoe Solar project.

As a construction worker I am generally supportive of infrastructure development. My career as a Laborer is a series of construction jobs over time. However, not all jobs are good jobs. For Livingston County, a 'good job' is one that pays a decent wage and provides employment opportunities for residents.

I am asking you to commit to Horseshoe Solar, built by local laborers like myself.

Thank you,

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Eric Waters

Laborers' Local 435

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